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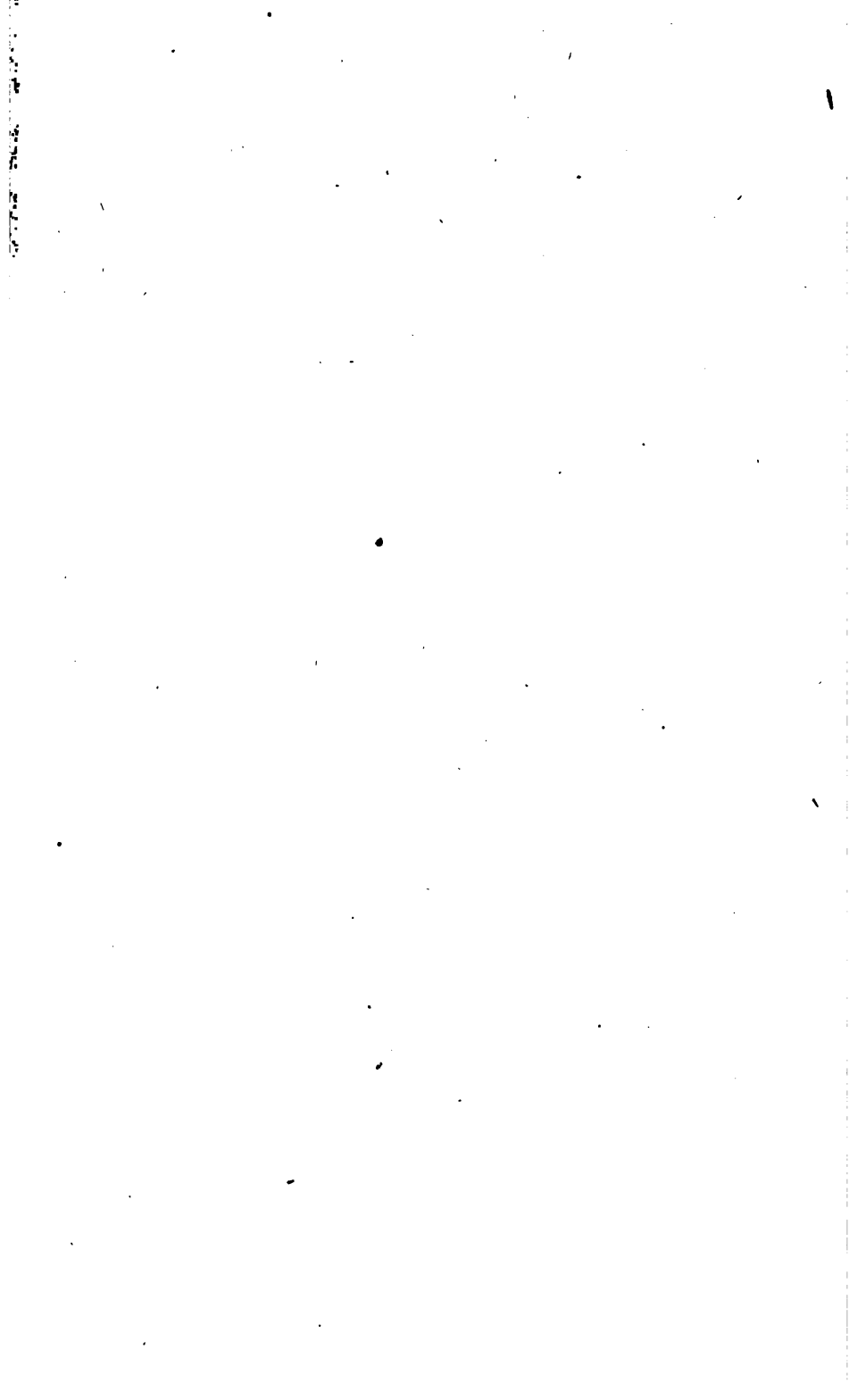
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No. XXVII.

ART. I.—THE RIGHTS, DISABILITIES, AND
USAGES OF THE ANCIENT ENGLISH
PEASANTRY.

PART IV.—*General Services.*

THE want of intelligent workmen, without the concurrence of other causes, might have destroyed the old English predial polity, if that system had not failed through its own nature ; having been essentially rude and awkward and uncommercial. Under the Plantagenets, service could in general be reduced to money at the discretion of the lord or the option of the tenant.* The service often cost the tenant more than it was worth—he found it cheaper to pay than to work : on the other hand, money must have been at all times welcome to the lord, and he did not at all times require labour. In the course of time agricultural service went out of use altogether, and money was regularly tendered and accepted instead of it : so that the

* Eorum consuetudines redacte sunt in redd' assis' ad voluntatem domini. (2 Hundred Rolls, 668.) Ista debent facere tenentes vel dare pecuniam si domino placuerit. (Add. 6159, f. 37, 38.)

improved rent, as it has been called, now paid by a farmer, appears to be a compound—historically considered—of the ancient mail or gable, and of a great variety of petty charges, which were originally compensations for tributes of corn, malt, poultry, bacon, and eggs—or fines for the non-performance of acts of tillage, carriage, portorage and the like. The elements of rent were recognised in Scotland longer than in England, because petty charges subsisted in Scotland for some time after they had been abandoned in England. At the beginning of the eighteenth century, David Deans—the tough true-blue Presbyterian farmer—still paid “mail duties, kain, arriage, carriage, dry multure, lock, gowpen, and knaveship, and all the various exactions now commuted for money, and summed up in the emphatic word RENT.”*

In our opening paper we divided agricultural tenants into two classes—observing that superior tenants only worked occasionally, and only performed the more important acts of husbandry; while pure villeins worked constantly for their lord, and were liable to all kinds of labour. But servile works were peculiarities attached by long usage to the tenement, and did not always follow the person of the tenant.† Any freeman might come into the occupation of a tenement in pure villenage, and might perform the services due from such a tenement without degradation, because the services were done on account of the nature of the tenement, not on account of the personal condition of the tenant.‡ When we read that the chaplains of Palgrave hold one acre and render fifteen pence and one seam and two bushels of oats . . . also three ploughings and three weedings and three harvestings with meat unum averagium ad terga per xii leucas circiter villam de Redgrave . . . et implebunt carectam fimo per dimidiam diem‡ . . . we are not to believe that the reverend gentlemen actually filled dung-carts with their own hands, or that

* Heart of Mid-Lothian, ch. viii.

† Co. Litt., 116 b.

‡ Add. 14850, f. 69.

they carried burdens on their backs to any place within twelve leagues of Redgrave: these duties might be commuted, or could be done for them. The chaplains held another tenement in the manor of Redgrave—seventeen acres—at a quit-rent of sixpence per annum.

Villenage and operative tenancy were almost extinct at the time of the Reformation. The few villeins, or operative tenants, then remaining, were in the occupation of small plots of land, and were in fact agricultural labourers working for wages, rather than tenants paying their rent in labour. They were scarcely to be found excepting upon church-lands, or upon lands which had lately belonged to the Church. Sir Thomas Smith has made this fact a reproach to the Church, saying—that holy fathers, monks and friars, although constant in urging laymen to manumit their bondmen, were not so ready to do the like by their own bondmen.* But if bondage became extinct in lay fees sooner than in church property, it was because lay lords were always in want of money, and were for ever unsettling, mortgaging, alienating, and forfeiting their estates. The feudal bond between a lay lord and his tenants in time grew slack; indeed, after the expedient of the conveyance of land to secret uses became general, the tenants of a lay lord could scarcely be sure that they knew the very name of their landlord; the person receiving their rents might be no more than a mere trustee. Villenage, then, endured longer in church lands than in lay fees because churchmen allowed their tenants to remain under ancient customs, not because churchmen were the worst landlords: on the contrary, English tenants were ready to say with German tenants—"It is good to live under the crosier!" †

An operative tenant of five acres usually worked once a week for the lord. We learn from Domesday that bordars were tenants of five acres, and that the bordars under the Castle of Ewias

* The Commonwealth of England, 261, 262.

† Unter dem Krumstabe ist gut wohnen. (1 Anton, 81.)

worked once a week:* the Saxon cottar held at least five acres, and was accustomed to work for the lord every Monday.† This custom prevailed in later times. If a tenant worked for the lord once a week the working day was commonly Monday. Hence we meet with a class called Mondaymen—lundmarii—whose tenements were called Monday-crofts, Monday-lands, or Monedayles. The Mondaymen at East Brent, in Somerset, had the following customs in the year 1517—each of them, by ancient usage, should annually, in forty days selected by the lord's steward, do forty works of summer and winter husbandry, called Monday-works, working and labouring well each day for six whole hours; each of them receiving, while at work, a halfpenny, the sum of which is twenty pence per annum: and each of them who should do eight autumnal works, working well six hours a day as before said, should receive one penny a day. At the same time there were Mondaymen at Limpesham in the same county; and they are noticed in earlier rentals at Castle Combe in Wiltshire, at Leighton in Huntingdonshire, in East Kent, and at Bocking and Hadleigh in the eastern counties. ‡

At Bury St. Edmunds, in Brakelond's time, there were humble servitors called Lancetts, bound by their tenure to clean the chambers of the monastery. A tenant of the abbey at Cokefield, whose tenure is not called lancettage, was obliged to thatch, to wattle and daub, to do carpenter's

* xii bordarii operantes una die ebdomad'. (Great Domesday, f. 186.) tenet unum bordellum et operatur die Lunæ in ebdomada. (Tindal's Evesham.)

† he sceal ælce Mon-dæge ofer geares fyrst his laforde vyrkan. (Laws of Landright.)

‡ Item dominus habet Monendayesmen scilicet Rob' Kouper qui tenet unum Monendayescroft et redd' iiii^d et operabitur omni die Lune per annum exceptis tribus diebus Natal' Pasch' et Pentecost'. (2 Hundred Rolls, 617.)

Item sunt ibi viii monedayles et debent a festo S. Michaelis usque ad pentecostem qualibet septimana quelibet terra unum opus scilicet die lune nisi aliqua festivitas eodem die evenierit. . . . Item vi monedaylond' debent arrare. . . . (Add. 6159, f. 183, also 53, 189, and 6160, f. 67, b.)

Opera lundmariorum in generali expressa. Opera custumariorum tenencium Domini ibidem, vocata Moundy-warkes, facta per diversos tenentes, vocatos Mondeymen, videlicet quod quilibet eorum, ex antiqua consuetudine . . . (Hearne's John of Glaston., 323, 331, App.)

work, to collect compost, to clean houses, etc.—but was not required to clear out the lord's *latrines*.* According to Spelman, lancetts occur very frequently in an old custumal of Lewes Priory. . . . in the soke of Hecham are twenty-four lancetts; the custom of them is that each ought to labour from Michaelmas until autumn in every week for one day with the prong, or spade, or flail, at the lord's will; they are to have a meal at three in the afternoon, and a loaf in the evening: they are to pay sixpence if not required to work in this manner: in addition to this labour and these days, each of them shall work in autumn for three pence every week on Mondays, Wednesdays, and Fridays, with a ration from the lord at three o'clock. . . .† This is not unlike the tenure of the Mondaymen just now noticed. Blomfield observes lancetts at Henderingham in Norfolk, and thinks that a lancettage consisted of eight acres.‡

An operative tenant of ten or twelve acres worked two days in the week, with some additional tasks in harvest time; and a tenant of fifteen acres or more, worked three days; the tenant of an entire tenement worked three days.§ This arrangement was not peculiar to England, for it appears in Charlemagne's Ordinances, and it was generally understood in Russia fifty or sixty years ago that a peasant was bound to work for the lord three days in the week, and that the three days remaining were his own.||

* Jocelin de Brakelond, 74, 150. Et debet cooperare domus vel Watlare, vel daubare vel carpentare vel finos unare vel domus mundare vel curtilagia fodere vel muros facere vel alia pertinencia in curia a mane usque ad ix pro i opere preter quod non debet mundare latrinas domini abbatis. (Harl. 3977, f. 98, b.)

† Spelman, Lanceta.

‡ 9 Blomfield, 227.

§ Boldon Book passim. unusquisque tenet xv acras de Lancet' et facit iii operationes in ebdomada . . . unusquisque tenet x acras et faciet ii operationes in ebdomada . . . unusquisque tenet v acras et faciet unam operacionem in ebdomada. (Harl 3977, f. 53.)

|| unusquisque annis singulis friskingam i pullos v ova x nutrit purcellos dominicos iv arat dimidiam araturam operatur in ebdomada iii dies. (Kar. Magni Cap. 3 Pertz. 177.)

ii mancipia, quæ sibi met ipsis iii dies in ebdomata proficiant, iii dies sancto Nazario serviunt. (1 Anton, 339, 338.)

Small services, such as threshing, thatching, delving, building, and enclosing, were called minute operations, manual operations, handenes or handaynea. A tenant bound to do three handaynes in a week, had to thresh a quarter of wheat; another had to thresh three daynes, which if of wheat would consist of six bushels, if of beans or barley of three bushels, if of oats of eighteen bushels.*

A tenant worked off one handene by making two perches, or eleven yards, of dike. A tenant at Darent, near Rochester, in the thirteenth century, did two perches of enclosure around the court, and seven perches of Racheie around the lord's corn. The service of enclosing the hall-garth or court-yard was called "burghard," or "burgyard." The tenants are still obliged to keep up a stone wall round the site of the manor house at Brotherton, in Norfolk; the mansion itself disappeared long ago. The fencing of a park was in some places distributed among a number of townships, each undertaking to maintain so many rods of paling; this was the custom at Pilton, in Somerset, where there was a deer-park belonging to the Abbot of Glastonbury.† The churchyard at Bradley, in Staffordshire, is said to be still enclosed by the parishioners associated in this manner, that is, each person is bound to finish a certain portion of paling.

The tenants also made or maintained the lord's sheep-fold. Each hyde at Thorpe in Essex had to make four cleys of rods for the fold out of the lord's wood. The twenty-five yokes of land at Southfleet had to make twenty-five cleys, the lord

* *facere qualibet ebdomada iii handenas scilicet triturare, fossare, claudere, domos cooperire, et muros erigere.* (Add. 17450, f. 70, b.) Notandum est quod die quando summagiatur vel aratur vel bladum metetur quietus erit de handaynis. (f. 34, b.) pro iii handaynes debet triturare i summam frumenti (f. 23, b.) debet triturare tres daynes que si fuerint de frumento continent vi buss'. . . . (f. 19.)

† sciendum quod quando fossatur pro handena debet fossare ii percat'. (ff. 68, 68 b.) Et claudunt circa curiam duas parcatas. Et claudunt circa bladum domini vii parcatas de Racheie. (Customale Roffense.) Item debent claudere xlvii virg' de burgyard vel dare iii^a xi^a ob' videlicet de quolibet iugo ii^a. . . De burghard quam tenentes debent facere . . . (Add. 6159, ff. 159, 165, b.)

Blount, 324. Add. 17450, f. 153, b.

finding the materials; the tenants were to carry the cleys entire to the sheepfold, and to keep them up for a year, coming at Hocktide to see whether they were in good order. In a survey of Beauchamp—not printed in the Domesday of St. Paul's, but cited by Archdeacon Hale—each cley is said to be made of nine stacks; one foot should be between the stakes; there should be one large stake and a writh or waver. In some places the tenants had to shift the fold at certain times—once a year, or twice a year, as at Martinmas and Hockday, and were not required to make the cleys.*

At times the tenants had to spread compost in the lord's field. To spread one row or rank of compost, or three rows of the length of a furlong, was a day's duty. They also collected stubble out of the corn-fields, and reeds out of the marsh; reeds and straw were strewn in apartments, and used for thatch or fuel. In many places they were required to gather nuts in the woods for the lord: the nuts were for making oil; a quarter of nuts answered to a gallon of oil.†

* *quelibet hida debet facere de bosco domini iiii cleras ad faldam de virgis.* (Dom. S. P. 43.) *De xxv jugis facient xxv cleies, et dominus illis materiem inueniet, et portabunt integras ad ovile, et illas per annum servabunt ne decendant, et venient ad terminum de Hockedei ad videndum utrum integre sint an non; et si non venient erunt in misericordia domini.* (Cust. Roff.) *quilibet cotarius faciet iiii crates et eas cooperiet.* (Add. 6159, f. 32.) *debent invenire ad predictum ovile xl clays annuatim.* (f. 50.)

Cladus—a hurdle for sheep is still in some counties called a cley. . . . (Kennet's Glossary.)

Cleys are mentioned by Fitzherbert. (F. N. B. 208.)

debet removee iiii cleyas de caula domini semel per annum (Add. 17450, f. 50.) *debet portare bis in anno faldam domini et valet ob' scilicet ad festum sancti Martini i cleyam et ad Hockeday i cleyam.* (f. 183.)

† *Et debet spargere tres rogos fimorum longitudinis unius quarentene pro una opera.*—Customs of Hatfield. (2 Clutterbuck's Herts, App.) *si debet dispergere compostum in campo disperget rengum de composto.* (Add. 17450, f. 32.) *debent falcare xii carectas de glui et ligare et ducere ad Curiam.* (Add. 6159, f. 61.) *colliget per unum diem glui in campis domini.* (f. 166 b.) *colligere ros in curleme.* (Add. 17450, f. 22.) *metet arundinem cum necesse fuerit.* (f. 122.) *Falcabunt juncum et portabunt in curiam.* (Cust. Roff.)

Headington] *uno die colligent nuces nomine domini in bosco qui vocatur Stowode.* (Kennet 320. 2 H. R. 710.) *nuces colligere per tres dies festos de singulis domibus singulos homines.* (Dom. S. P. 38.) *un quarter de noyz deit respourde de iiii galons de oille.* (Hosebonderie.)

Nutting was rather a pastime, or holiday-task, than a service. The nutting expeditions at Wickham, in Essex, were to be made on three feast-days, which are not named, but Holy-Rood day, the fourteenth of September, may have been one of them. The editors of the "Popular Antiquities" cite the old drama of "Grim, the Collier of Croydon"—

"This day, they say, is called Holy-Rood Day,
And all the youth are now a nutting gone."

To make malt for the lord was usually the chief service of the poorer tenants in the immediate neighbourhood of a monastery, as at Darent and other places near Rochester, and at Battle; tenants at a distance, instead of making malt, in some places paid a tax called malt silver. The cottagers carried their lord's malt to the flour mill to be crushed, for they were not allowed to keep hand mills or mortars, which might be used in grinding corn. The malt might be dried at home, for kilns were common in old houses, but in some manors the lord had a public kiln, which the tenants were bound to make use of.*

A tenant under the ban of a soke-mill who withheld the service due to it, or followed another mill, had to pay a fine and forfeited his horse and his sack with the corn or flour in it. Almost all mills in France and Scotland were banal, but in England soke-mills were not very common. At Wryngton, in Somerset, the customary tenants were held to grind their grain at the lord's customary mill, or to pay an annual fine: a yardlander, or tenant of about thirty acres, paid two shillings and eightpence, a tenant of three parts of a yardland paid two shillings, a tenant of half a yardland paid sixteenpence, a tenant of a quarter of a yardland paid eightpence, a cottager of ancient tenure paid fourpence. Tenants were usually required to repair the soke-mill and

* Debet triturare contra Natale Domini in orreo Domini sui ii quart' orde et faciet inde brasium ad domum suam et siccabit et postea cariaabit ad molend' ad moland' et de molend' ad pistrinum domini sui. (2 Hundred Rolls, 539.) dabit iii gallinas quæ vocantur Malthennes. (541.)

its dam, and to fetch new mill-stones whenever they were needed.*

The most irksome tasks were the transport services, called in Scotland the duties of arriage and carriage. Old Skene tells us that . . . Arage, vtherwaies average, is from Aver, which signifies ane beast . . . and swa consequently average signifies service the tennant aucht to his maister by horse or carriage of horse . . . We read likewise of *fotaver*, *averagium ad pedes*—of a man bound *averare super dorsum suum*—and of tenants called *pouchers*—*pokaveragii*, because they were required to carry goods in a poke, pouch, or bag.†

A seam—summa—the load of a sumpter-horse—*summarius*—was usually eight bushels—the weight of a sack of wool, or of a quarter of corn; but in some places an average or horse-load was no more than six bushels. The custom of the gavelmen at Southfleet was as follows—if the lord wished to send corn to London they came with their avers and sacks to the granary of Southfleet, and each of them took three-quarters of a seam, or six bushels, and carried it to Gravesend, Northfleet, or Greenwich, and put it on board ship in their own sacks; if the sack of any one of them was lost he was not

* Si quis autem de prædicta soca renuerit venire ad prædictum molendinum, et repertus fuerit veniens ab alio molendino non solito, saccus et bladus et equus et forisfactum erunt canonicorum. (6 Monasticon, 204; also 399.) tenentes customarii tenentur molere grana sua ad molendinum Domini consuetum vocari Benemyll modo in tenura Edmundi Leuer-egge Ferdellarii, aut solvere redditum annualem in denariis, ut sequitur, viz. quilibet virgatarus ii^s viii^d. Triferdell' ii^s dimid' virgat' xvi^d. Ferdell' viii^d. et cotarius antiqui astri iiii^d. (Hearne's John of Glaston., 353.)

The hardships of living under the ban of a mill in Scotland are described in the Monastery, chap. xiii.

† Qui non avrant faciunt fotaver. (Dom. S. P. 3, 6.) debet unum averagium ad pedes. (83.) debet averare super dorsum suum quandoque placuerit domino. (Harl. 3977, f. 100.) Pokaveragii. (f. 37. b.) qui tenent pokeaver. (f. 38.)

On the first spring-tide after the 24th of June, the poor who possess neither cart nor horse have the exclusive right to cut *vraic* [=wrack, seaweed] on consideration that it is conveyed on their backs to the beach . . . Thus cut and conveyed it is called *vraic à la poche*, and distinguished from *vraic à cheval*. (Channel Islands' Agri. Report, 275.)

bound to do arriage until the lord had replaced it.* A wain-load was apparently nine seams. The goods carried were chiefly provisions—grain, pulse, malt, honey, bacon, suet, salt, and wood. A castle or monastery was *farmed*—that is supplied with food—by the nearest manors belonging to the lord. The farming was done according to a regular cycle, each manor sending supplies in its turn for so many days or weeks. We have a list of thirty-five villages which took turns to farm Ely Minster—some for three or four days, some for a week, some for a fortnight. In the Rochester Custumal we have the order in which the neighbouring manors are to do the farms for Rochester; the first month of Southfleet beginning on Michaelmas-day, the month of Wouldham on the eve of St. Simon and St. Jude, the first fortnight of Stoke on the eve of St. Katherine, and so on through the thirteen lunar months—the catalogue ending with the third month of Frindsbury, which began on the eve of St. Giles the Abbot, and ended on the eve of Michaelmas.

Everything contributed in this manner did not travel in waggons, or packs and panniers; oxen and swine were driven to the head of the barony to be slaughtered, especially at Martinmas; if the drovers came from any distance they received drove-meat.† Arriage and carriage were not very

* Sunt viii^{xx} Averag' que continent cccxxxvii summas ordeï videlicet vi buss' pro averag'. (Add. 6159, f. 25.) Debent et hanc consuetudinem gavelmanni de Suhtfliete. Si dominus voluerit mittere Londonias venient cum averis suis et saccis ad granarium de Suhtfliete, et accipiet unusquisque tres partes summe. . . . (Cust. Roff.)

† Inprimis Seelford duarum solvit firmam ebdomadaram, Stapelford unius, Littleberi duarum. . . . (Hist. Elien. II. 84.) debet cariare lanam aut caseum domini ubi necesse fuerit in eodem comitatu vel apud Winterborn vel apud Merlebergh. (Add. 17450, f. 25.) debent droviare scilicet fugare animalia. (f. 45, b.) fugabit et habebit Drofmete. (ff. 126, 134, b.) pro animalibus fugand' Cant' ad lardar' ad festum Sancti Martini viii^d (Add. 6159, f. 41, b.)

Bestes thai brac and bare;
In quarters thai hem wrought;

Martins as it ware,
That husbondmen had bought.
(Sir Tristrem, I. 42.)

Instead of the last word we should read *brought*. The meaning appears to be that the hunters divided the deer into quarters, as though they were Martinmas beeves, which the tenants had brought in.

burdensome when fulfilled by the removal of so much wool, or cheese, or corn, or bacon, to a neighbouring town; but they became serious when a tenant had to ride or drive from the heart of England to the coast and home again. When fish was wanted at Rochester, the tenants of the four hydes of Hedenham and Cuddington, which are near Aylesbury, were called out; two of the hydes brought the fish from Gloucester into Buckinghamshire, and the other two hydes carried it on to Rochester:* it is likely that they were sent to fetch the dainty lamprey, still sought for at Gloucester. The *langerodes*, or long journeys,† were very troublesome to the tenants, but could not be dispensed with while there were no regular mails, and no public conveyances. A person undertaking a *langerode* either received some remuneration or worked out his rent by serving as a carrier; in general he was not inclined to leave his home and farm, and found it more convenient to pay the price of the service, which enabled the lord to find another carrier. No services were more frequently commuted than the duties of arriage and carriage, and a body of professional carriers was gradually formed by the habit of constant commutation.

We shall attempt to describe the grand operations of tillage, of the corn and hay harvest, and of sheep-shearing in another number.

ART. II.—PRISON DISCIPLINE: THE PRESENT
STATE OF THE QUESTION. BY PROFESSOR
MITTERMAIER.

THE question as to the prison discipline best suited for the attainment of the desired end, has latterly assumed a substantially different aspect, so that we may now begin to

* *Customale Roffense.*

† *Unum averagium debent in anno quod vocatur langerode.* (Harl. 3977, f. 98.)

reckon on the possibility of arriving at a better understanding on the subject. The old disputed question, whether the system of associated imprisonment, or that of solitary confinement, is to be preferred, and how the former might be amended, disappears, giving place to a general conviction, the result of recent investigation, that solitary confinement must be recognised as an indispensable part of all prison discipline. The question at present is rather whether solitary confinement should be adopted as the general and only system in carrying out the entire execution of sentences of imprisonment, or whether it should be employed only for a part of the sentence. Thus, all criminals being condemned to solitary confinement, though only for a term, that term might be either fixed by law, or it might be left to the discretion of the prison authorities to decide when it might be desirable to admit the convict to associate with other prisoners. The views existing at present in Germany, Switzerland, and Italy, will be best seen by treating—

- 1st. Of what has been effected by philosophical inquiry.
- 2ndly. What by legislative decree.
- 3rdly. What by means of the lessons of experience.

I. It must be acknowledged that, in all recent philosophical and legislative inquiry on the subject of prison reformation, it is important to duly test the results of the methods adopted in England and Ireland. With regard to England, the recent reports and writings of Sir Joshua Jebb, ("Memorandum on Different Questions Relative to the Management and Disposal of Convicts:" London, 1861,) have been consulted. In Germany especially, Sir Joshua Jebb's labours in prison reformation are highly appreciated. Still, in his late publication he makes important acknowledgments, *e.g.* p. 21, on the danger attending the admission of prisoners to intercourse with others, even after long isolation, and on the great difficulty of laying down a discipline offering sufficient guarantee. It is to be regretted that Sir Joshua Jebb should be so decidedly opposed to the Irish, or intermediate system, and

it is to be feared that, in some respects, he is occasionally involuntarily biassed by a certain jealousy that exists between the English and Irish; though it must be confessed that, although a system may work well in one country, great prudence is requisite in introducing it into another, and perhaps the non-existence in England of many of the police regulations of Ireland may tend to make the English system more efficient. It is evident that in Germany, Italy, and Switzerland, the Irish system of prison discipline is more and more appreciated. The reports of the Director-General, Capt. Crofton, have excited great attention, as have also those made by the other excellent and experienced men at the Dublin Congress of the Social Science Association, and especially the admirably practical exposition delivered by Capt. Crofton at the Congress, which made a great impression in favour of the Irish system.

Another English publication has likewise been read with great interest, viz., "The Prison Chaplain," a memoir of the Rev. John Clay, in which an important comparison is made between the English and Irish systems with regard to the probationary ticket of leave, and in which (pp. 418—442) the defects of the English system are practically developed: showing, at the same time, that by means of the probationary ticket of leave, the Irish system affords a better guarantee for public security than can be reckoned upon by the English.

Among the recent publications in Germany since 1861,* the following on prison reformation deserve especial mention. 1. A series of publications has appeared respecting the regulations of the Moabit prison in Berlin, according to which the entire administration is confided to the members or Brothers of the so-called "Rauhen Haus," and they are consequently

* With regard to those published before 1861, the author of the present Report begs to direct attention to his two publications on "Prison Reformation." Erlangen, 1858. "The present State of the Prison Question." 1860.

the acting overseers and workmasters, under the direction of Herr Visschers, known in England as head of the prison administration in Prussia. Professor Von Holtzendorf,* who was listened to with so much interest at the Dublin Congress, has rendered fresh service by showing, in various publications, from hitherto unknown sources, that these Brothers of the "Rauhen Haus," forming in reality a religious order, may easily become prejudicial in a prison where they alone have the direction, for experience shows that they too generally act from one-sided views; being too much under the influence of a religious, pietistic mysticism, to succeed in the reformation of convicts, they are far too apt to make hypocrites of them, whereas experience proves that nothing but a practical method of straightforward reformatory progress can succeed with criminals. This attack upon a system favoured and upheld by many influential persons, called forth many publications in defence of the Moabit system, especially endeavouring to prove that the apprehensions entertained on the subject were unfounded and imaginary.†

2. A work of Schuck's‡ is worthy of attention. He was himself prison guardian for thirty years, and afterwards for several years Director of Moabit, but was removed, it appears, for not yielding implicitly to Herr Visschers. Herr Schuck defends the Moabit regulations, and in so doing unjustly opposes the appointment of subaltern officers (*Unteroffizieren*) as sub-directors of prisons. His book, however, deserves attention, for the importance his experience induces him to attach to the separate system; for the comparison he draws between the two prisons of Bruchsal and Moabit, both built on the separate principle; and for certain important observa-

* "The Brethren of the Rauhen Haus, a Protestant Order in the Service of the State," by Von Holtzendorf. Berlin, 1861.

† Such as, "The Brethren of the Rauhen Haus," by Herr Oldenberg, Pastor of Moabit. Berlin, 1861. "The Separate System in Prussia," by Böhlau. Weimar, 1861. "The Cellular Prison Moabit," by Orloff. Gotha, 1861.

‡ "The Separate System as Practised at Bruchsal and Moabit." Leipsic, 1862.

tions, such for instance as on the reformatory training of the convict under the separate system, and on insanity.

3. The late publication of Fuesslin* must be signalled, the author having been for many years Director of the Bruchsal Prison, in which he took an active part in introducing the separate system. He likewise shows how unfounded are the assertions that have appeared in many of the public papers against the efficiency of isolation as practised at Bruchsal, and how unjust it is to charge that system with producing so many cases of relapse.

4. A work of Götting† upholds the separate system as that best adapted to work moral reformation, and shows in what consists the reformation that can be effected in a prison by means of isolation.

5. A useful work is that by Bauer,‡ for many years Superintendent of the House of Correction at Bruchsal, and who especially directs the industrial department. The dictates of his experience are valuable as to the good resulting from employment being given likewise in solitary confinement; he considers it a means of moral reform.

6. Von Holtzendorf, who labours with so much zeal in the cause of prison reformation, tests, in one of his works,§ the Irish probationary ticket-of-leave system, showing the principle on which it is based, and proving the fallacy of the opposition raised against it on the ground that thereby a sentence of condemnation for a fixed term loses both in dread and force. The author shows that probationary liberation quite accords with the intention of the law in passing sentence of condemnation—that the judge may err in adjudging the penalty, and that in allowing a certain discretionary power,

* "The Recent False Charges against the Separate System through Misrepresentations of the Results of the System as adopted at Bruchsal." Heidelberg, 1861.

† "Justice, Life, and Knowledge. For the Educated of all Classes." Hildesheim, 1861.

‡ "Industrial Labour in Prisons." Carlsruhe, 1861.

§ "Discretionary Mitigation of Sentences of Condemnation." Leipsic, 1861.

depending on the conduct of the convict, we have one of the best means of ensuring a just degree of punishment. The defects he points out in the English regulations, and the conditions he suggests to render probationary liberation efficacious, deserve the attention of English jurists.

7. Dr. Gutsch, physician of the Bruchsal prison, publishes his collected experience on the development of insanity under solitary confinement.* He acknowledges that a considerable number of such cases have occurred at Bruchsal, but that it would be very unjust, on that account, to depreciate solitary confinement as a principle. After careful investigation, it is evident that one half the cases of insanity were of a slight character and curable, that the cures were in the proportion of seventy per cent., in five cases the convicts being decidedly insane on arrival, and the surgeon alone was to blame, who, either from ignorance or negligence, pronounced the individual accountable. In forty-four cases there was evidently a predisposition, independently of imprisonment. In all cases suitable measures were promptly adopted. One cannot, however, agree with the author in advocating that the convict showing symptoms of derangement should continue in the prison, instead of being removed to a madhouse.

Among the works that have appeared in Italy on the subject of prison reformation, the following deserve attention.

1. Observations of Director Ambrosoli,† who decidedly pronounces in favour of the separate system, though with the proviso, that the term of isolation should not be too protracted, and that it should rather be employed at the commencement of imprisonment, and with due regard to the best means of ensuring the moral reformation of the convict. Probationary liberation, as a reward for exemplary conduct, he thinks worthy of recommendation.

* "On Insanity under the Separate System. From Facts Collected in an Experience of Twelve Years in the Prison of Bruchsal." Berlin, 1862.

† "On the Penal Code of Italy." Milan, 1862. P. 49.

2. An important publication is that by Sig. Girolamo,* who has been for many years Governor of the Lunatic Asylum at Pesaro, and has consequently had the best opportunities for observing the narrow boundary that often exists between crime and insanity, and how necessary it is to study the laws of the development of human nature, in which similar causes often lead either to crime or insanity. The author shows, in a mass of practical observations, how easily the judge may err, and how necessary it is in passing sentence to have due regard to the individuality of the convict. He pronounces for the separate system; but applied judiciously, isolation acting so differently on different individuals. He very ably shows that the education of the convict in prison ought to be in many respects analogous with the treatment of insanity in a mad-house, and therefore how important it is that the governor of a prison, as well as the physician, should have been trained to physical investigation of human nature. He likewise approves of probationary liberation and the intermediate system.

3. Two works on the efficiency of the separate system in Tuscany are worthy of attention. A physician, Sig. Morelli,† wrote in 1859 a treatise denouncing cellular imprisonment, giving his own experience in the prison of Volterra, with various statistical data, in proof of the deteriorating effect of the system, both physically and morally, and of its by no means answering the desired purpose.

In reply to this last, the Governor-General of the Prisons in Tuscany,‡ Sig. Peri, makes it evident that Sig. Morelli's statements are exaggerated. It must be allowed, he admits, that much was to be complained of in the Volterra prison as to the locality, but that the Government had not delayed to

* "On Penal Condemnation according to the Modern Penitentiary Systems; and on the Application of Criminal Law." Florence, 1862.

† "Sanitary Essays on the Penal Régime under the Separate System." Florence, 1859.

‡ "Reply of Sig. Carlo Peri to the Treatise by Dr. Morelli." Florence, 1860.

remedy the existing evils, and that, in general, the facts of experience were in favour of the separate system.

These two publications must be considered together. Although Sig. Morelli may be reproached on the one hand with exaggeration, and on the other with passing over in silence what has been done by the Government, yet his publication is important for showing, as it does, how little success can be reckoned upon in adopting the separate system in old prisons, patched up to serve for the purpose, and in which the necessary precautions cannot be taken to prevent injury to the health of the convicts.*

II. With regard to what has been effected legislatively in the domain of prison legislation, we would particularise the following :—

1. The Bavarian Law of November 10th, 1861, On the Punishment of Criminals by Solitary Confinement. In Bavaria the opinion has been more and more gaining ground, that the associated system of imprisonment can hardly fail to act more or less injuriously on the convict, and can only to a certain point be reformatory. Even in the prison at Munich, in which Herr Obermaier laboured so zealously, the increasing number of murders perpetrated among the convicts, especially of those suspected of being informers or traitors, showed that he himself was under illusion as to the success of his system.

In Parliament the old system was constantly attacked, and the introduction of the separate system demanded. In revising the penal code the Government could not remain indifferent to the increasing preference given to the separate system, but it was thought desirable, before deciding definitely for the future, to obtain some experience in their own country

* A work by Advocate Costi of Athens should not be passed over in silence, in which he communicates to his countrymen the results of the investigations and efforts in prison reformation published in England and Germany, earnestly pointing out the need of reformation, and the advantages of the intermediate system and the probationary ticket of leave. "Observations on Prison Discipline." Athens, 1862.

on the results of isolation, and thus the said law of November 10th, 1861, was passed by way of transitional experiment. It decreed:—

A. That buildings should be erected on the cellular system for men only. For women, isolation was not deemed applicable. It was to be tried upon convicts whose sentences varied from two months to five years, but not beyond. Caution was to be observed in not adopting it for convicts who appeared either physically or morally incapable of bearing it.

B. The sentence of solitary confinement was not to be executed with the extreme rigidity practised at Bruchsal or Moabit. True, (Art. 3,) each convict was to be kept to his separate cell, excepting for the time requisite for exercise in the open air, public worship and education. These exceptions rendered the isolation less absolute than at Bruchsal.

C. By way of encouragement in the reformation of convicts, it was proposed (Art. 8) that those who had shown symptoms of amendment after a year's solitary confinement should, the better to ensure the durability of their reformation, be admitted to work with others.

D. Since it must be confessed that isolation is an intensely severe penalty, Art. 12 suggests, as a possible alleviation, that in sentences to solitary confinement the term might be reckoned in the proportion of two days of isolation as equivalent to three of associated imprisonment. This, however, not for the first six months.

E. By way of experiment in further carrying out the separate system, it is added, (Art. 12,) that in the old prisons there should be a certain number of cells prepared, in which convicts, without distinction of sex, shall be kept separate for six months from the time of their entrance, or for longer, with the consent of the convict.

2. In the Kingdom of Hanover (1st February, 1862,) a bill was brought into Parliament for the introduction of the separate system. This can only be considered as a partial measure, it not being possible for some time to introduce it generally.

A. The bill proposes that isolation should be enforced in all penal sentences; for, once its efficiency admitted, there is no reason why it should not be the general rule.

B. Convicts showing less moral depravity should, by preference, be isolated.

C. On the term of isolation they were not prepared to decide, but the general opinion was that it should not exceed three years.

D. In consideration of isolation being so hard to bear, the law admits of a reduction of the term proportioned to the criminality of the convict, so that in a sentence of three months' imprisonment, one day of isolation shall reckon as two days of the common prison. In the house of correction, for a sentence of one year, three days' solitary confinement shall be equivalent to four under the old system.

3. In the new penal code for Bremen the separate system is decreed, and every effort is made to render it efficient as a means of reformatory progress—adopting it likewise for the whole of the sentence. The project is to have only one prison, in two divisions—the one to be the house of correction, and the other for the prison. During public worship the convicts are to be kept separate. A fixed term of isolation, as in Baden, for six years, is not decreed. By a resolution of the committee of inspection, isolation may be suspended for the convenience of associated labour for convicts, under a sentence of six months or less, having already had a month's imprisonment, at their own express request, and when there is no ground for fearing a bad influence; likewise, by way of trial, for correctioners who have been in confinement eighteen months, if they show signs of amendment.

4. Three of the Swiss cantons—Aargau, Neuchatel, and Basle—have recently declared for the separate system. The principal prison is to be in Aaran. Chief Justice Welli has the merit of convincing his countrymen of the advantages of the separate system and of procuring the erection of a new prison. A high premium was offered for the best plan, and

the building is progressing rapidly. It is planned so as to meet all requirements, both for associated and solitary imprisonment; certain of the cells being only for sleeping, as during the night all are to be kept separate; other cells of larger dimensions serving for day and night. In Neufchatel and Basle prizes were likewise awarded for the best models.

5. The city of Frankfort has likewise offered a similar premium for a plan according to regulations drawn out by the experienced Herr Varrentrapp, in which the separate system is to be more thoroughly carried out than in Switzerland.

6. In Italy, two states only can be named as having seriously entered upon a system of prison reformation, viz., Tuscany and Piedmont.

As already mentioned, the separate system was adopted throughout Tuscany in the year 1849, and the Governor-General, Sig. Peri, laboured most successfully in its establishment. We have, however, already shown likewise that it called forth much opposition, especially through the writings of Sig. Morelli. In 1859, Tuscany was united to Piedmont, and in September of the same year the Provisional Government appointed a commission of inquiry with regard to prison discipline. Their report was to the effect, that it were a crime to think of returning to the old system, but that, at the same time, absolute uninterrupted isolation, especially for the southern temperament, was not desirable; that the sentence should be divided into three periods. 1st. Complete isolation for a fixed term. 2nd. Associated, but solitary for the night. 3rd. Agricultural labour in appropriated localities. On the 10th January, 1860, the Government decreed the cessation of capital punishment, also that convicts sentenced to imprisonment should pass the whole term in solitary confinement; those sentenced to hard labour to be isolated the first half of their term; those sentenced to the house of correction for the rest of their lives, to be isolated for the first ten years, and then admitted to work with others, constant silence being enforced.

It is to be mentioned that, from May, 1858, an attempt has been made in Tuscany for the establishment of a penal colony on the island of Pranosà, that convicts from the different prisons, who may be found worthy of it, should be rewarded by being removed there to work in the open air, thus instituting an intermediate prison, as in Ireland. According to communications received by the author of the present report from Sig. Peri, the organization is very good. There are 130 convicts on the island, and hitherto there has been no disturbance.

In Piedmont, in 1847, the separate system was adopted in the principal prisons, for the night, while during the labours of the day silence was enforced. In 1857 interesting discussions took place in Parliament on the separate system, and many were in favour of it, but it was adopted only for criminals under examination and convicts sentenced for six months. Further application of the separate system is still opposed in Piedmont. In 1861, a new prison was built at Cagliari, and the necessity of reforming the prison discipline throughout the country was brought before the Government, and the result was, that on the 16th February, 1862, a commission of nine members was appointed by the King for inquiring into the subject, two of the members being Sig. Peri and Sig. Vegezzi Ruscalla, who had both laboured so zealously for many years to obtain the most suitable methods for carrying out the separate system. One of the duties devolving on the commission was that of proving whether the penalty of hard labour on board the hulks or galleys is, or is not, consistent with the present state of civilization, and the progress made in penal modification, especially as compared with the sentences grounded on the penitentiary system—in case of their showing being negative, what penalty should be substituted. Further, whether it were not desirable to concentrate all the prisons, including the hulks, under one administration. The researches of the commission were also to be directed to the different penitentiary systems, and to decide which was the best—

especially they were to consider the sort of buildings best adapted for the efficient working of the penitentiary system. Finally, they were to show whether penal agricultural colonies are desirable, as a gradation in the penalty, or whether it might not be arranged that such penal colonies should be employed, by way of mitigation, for convicts whose good conduct might deserve it. Much is to be hoped from the investigations of the commission.

We have to add also, that on the 27th January, 1861, a code of prison regulations, containing 331 paragraphs, was issued for the Kingdom of Italy.

III. As regards experience on the subject of prison discipline; it is a cause of complaint that, owing to the Governments keeping the executive power in their own hands, much, especially with regard to prison administration, is kept secret, and consequently nothing can be known of the working of the separate system as is the case in England, Scotland, Ireland, and Switzerland. The prison directors give in their annual reports to the ministry, but these reports remain official secrets, and are never published—the prison *employés* are even bound by oath to make no communications to third parties. Thus important facts cannot be turned to account, and the press is deprived of a principal means of censuring error, and of exposing prejudices and misunderstandings with regard to new and improved systems. In Prussia, latterly, an official notice* on prisons has been published, but one cannot be satisfied with this way of enlightening the public. Such reports can only attain their end when, as in England, Ireland, and Scotland, the director, as well as the pastor and the physician, give in their separate reports, with their individual observations and experience. Thus, the citizen possesses the direct testimony of the prison officers—whereas, after the Prussian manner, Herr Visschers only, as Governor of the Prisons, makes a

* "Communications from the Official Reports of the Prussian Royal Prisons under the Jurisdiction of the Minister of the Interior; During the Years 1858, 1860." Berlin, 1861.

general statement, in which he quotes certain passages from the reports of the several officers, as may appear fitting to him from his own point of view. There is much to condemn in the Prussian prison regulations. The ministry had announced to the members of parliament, that the Government authorised the trial of the separate system in one of the prisons, through a special order of administration, though as a system it was not recognised in the law of the country. It would seem that the proposed changes do not accord with the spirit of the constitution. In Prussia, likewise, the prison administration most inexpediently comes under the jurisdiction of two different ministers —those in which are confined prisoners under examination and convicts under sentence, fall under the jurisdiction of the Minister of Justice; while the houses of correction and prisons in which convicts sentenced for longer terms are kept, fall under the jurisdiction of the Minister of the Interior. It is evident that thus no uniform and suitable system can be acted upon in any of the Prussian prisons. Only in the Moabit Prison in Berlin is the separate system used for criminals sentenced to the house of correction, and they should be between the ages of eighteen and forty-five, and such as it may be deemed advisable to isolate entirely, day and night. It is evident that from experience obtained in such a prison, in which, moreover, the convicts for the separate system are selected, no decision can be arrived at as to its being really injurious. It was stated above that the overseers in this prison are all Brothers of the Rauhen Haus, and that this circumstance creates dissatisfaction. The principal German prison built upon the separate system is that of Bruchsal, in Baden. To that are sent convicts sentenced to the house of correction, not, however, for longer than six years, so that at the expiration of this term the convict passes into the common prison, unless he prefer to remain isolated. Experience shows favourably for the result of the separate system as conducted in Bruchsal, in that it has a decidedly reformatory influence on the convict. Though it is not to be denied that several of

the liberated from Bruchsal have relapsed, yet the number is not so great as from other prisons, and the blame in many cases no doubt lies rather in the want of proper establishments where the liberated could be suitably employed and guarded. It was mentioned above that, according to the report of the officiating physician, insanity often ensued at Bruchsal. It is, however, shown that in 1860 there was only one case of insanity, and in 1861 none at all.

The Government is willing to grant tickets of leave to such convicts as, either from physical or moral causes, could not safely be committed to solitary confinement; likewise in many cases clemency has been shown on account of good conduct, and the remainder of the sentence been remitted. In 1860 there were thirty-five such cases. In 1861 there were twenty-five. The most remarkable fact is, that each year the number increases of those who, having been in solitary confinement six years, might be admitted into the common prison, yet prefer continuing in their cells—this is a satisfactory testimony to the preference given by the convicts themselves to the separate system. In 1859 there were ten such cases.

Satisfactory experience has been made in the prison of Vechta in Oldenburg, in which the very zealous Director, Hoyer, has effected much in the reformation of criminals. Latterly, convinced of the advantages of the Irish intermediate prison, considerable acquisitions of land have been made in the neighbourhood of the prison, enabling them greatly to improve their discipline—the gradations of which are: isolation at first, to which all are committed for a longer or shorter period: where there are proofs of decided and durable reformation, the convict may be removed into the intermediate prison, in which the treatment is milder, combined with the privilege of working in the open air: in case of bad conduct the convict returns to his former class. Facts speak much in favour of this prison. But few of the liberated have been recommitted, and they have been chiefly imbecile and indifferent, or convicts

that had been in other prisons and become more and more depraved through bad association.

We have yet to observe that a Prussian "Prison Association" in Rhenish Westphalia publishes an annual report, in which the resolutions passed by Government are given, and important facts communicated, showing the serious necessity there is for prison reformation, with accounts of the condition of different prisons, often accompanied by severe criticisms of their defects and deficiencies. One signal service this association renders is, its taking upon itself the presenting of petitions to the ministry.

The general result of the views entertained by the true friends of prison reformation in Germany, Switzerland, and Italy, is the conviction that the separate system, well organized, can alone strike at the root of the evil; that considerable misunderstanding still prevails as to the object aimed at in the separate system—the principle not being sufficiently recognised that the end proposed by the penalty ought to be the reformation of the criminal. This was most ably demonstrated by the Attorney-General of Ireland, Mr. O'Hagan, at the Dublin Congress of the Social Science Association.* "While the prison," he says, "should ever retain its dread character of justly incurred penalty, still there must be combined with this severity the endeavour to reform the convict."

Everywhere it is becoming better known that where the introduction of the separate system has not appeared successful, the Government has been to blame, in dealing with half measures—from mistaken economy, neglecting the means and regulations on which depend the success of the separate system. Blame likewise rests with the prison officers, who do not enter into the spirit of the new system—they cannot understand that reformatory education, adapted to the individuality of the convict, is the desired aim in the separate system.

* *Transactions*, 1861, p. 61.

ART. III.—GENERAL AVERAGE.

OUR readers are no doubt aware, from the two articles on General Average which have appeared in the *LAW MAGAZINE*, that an attempt is being made, chiefly by mercantile men who are practically conversant with the subject, to bring about uniformity, or at least some approximation to uniformity, in that portion of the Law Maritime of this and other countries which relates to the important subject of general average.

The inconvenient and even absurd results which follow from the want of uniformity on the subject must be very striking to mercantile men. The act or loss which gives rise to the right of general average, such as the jettison of cargo, or the cutting away of masts, is one that takes place on the high seas. The persons jointly interested in this act—the owners of the ship and cargo—are, as likely as not, persons of different nations. The contract which has for the moment bound them together, the contract of affreightment, is a contract which is commonly entered into and takes its inception in one country, while it is to be carried into completion in another country. These things being so, it would seem theoretically reasonable that the results which should follow upon the jettison or other act done for the common good ought, so far as the effect of laws is concerned, to be precisely the same, whether the ship's head happens, at the time when that act is performed, to be turned eastward or westward,—whether the ship is on her way from New York to London or from London to New York. There is, in fact, a close analogy between a jettison or similar act and marine salvage. Questions of salvage are settled in the Admiralty Court on principles of international, as distinguished from municipal law; and it is not easy to see why it should not be the same with questions of general average.

It may perhaps be thought that, however valid such reasoning as the above may be as a matter of pure theory, the difficulty of carrying it into practice would be insuperable. Granting, it may be said, the advisability of having one uni-

form system, were it possible to begin *de novo*, yet how will it be possible to force into harmony systems of law which probably set out from the very beginning on distinct and contradictory lines of thought? To the difficulty thus started there is, with reference to the subject on hand, a ready answer. Fortunately for the advocates of uniformity, it is the fact that the sea-laws of all European countries, and adoptively of America, have one common origin; and all, to a considerable extent, agree in their leading principles, notwithstanding their somewhat wide divergence in the application of those principles. The common origin is that supposed fragment of Rhodian law which is incorporated into the Roman Civil Law. The agreed leading principle is, "*omnium contributione sarciatur quod pro omnibus datum est.*" There is then a standard of universally admitted authority to which every question in difference may be referred.

These few observations have been made in order to dispel any suspicion which might lurk in the minds of our readers; that the task which these maritime law reformers have taken in hand is Utopian. We now proceed to lay before them the draft of a Report which has been prepared in pursuance of this aim.

From the Report of the Proceedings of the National Association for the Promotion of Social Science, held in Glasgow in 1860, it appears that, at the invitation of the chairman of the General Shipowners' Society in London, of the chairman of Lloyd's, and of the chairmen of various influential bodies in London, Liverpool, Glasgow, and Hull, a body of delegates from various parts of the world met together at Glasgow. There were representatives specially appointed by the chambers of commerce, boards of trade, and underwriters' associations, of Amsterdam, Antwerp, Bremen, Copenhagen, Lisbon, and other continental seaports. Nor was the interest taken, or the attendance, confined to Europe. Boston, New Orleans, and New York, also sent their representatives. It was at that time possible for the two cities last named so far

to work in unison as to adopt the same representative; the person chosen for that purpose being the very able and very learned judge of the Key West Admiralty Court, the Hon. William Marvin.*

The immediate result of this meeting was, the adoption of certain resolutions, and the appointment of a committee for the carrying out of the objects in view. Since then, the subject has not been allowed to sleep. A second general convention of English and foreign members met this summer in London. Some changes were made in the constitution of the committee, but the work, though still in the underground stage of preparation, is, we believe, steadily going on. As some sort of earnest of what may be expected, we are at liberty to lay before our readers the draft of a Report which has been adopted by the English section of the committee, and is being circulated among the foreign members, for purposes of further discussion and as a basis for eventual agreement.

REPORT.

SECT. I.—PRELIMINARY OBSERVATIONS.

It is highly desirable that there should be uniformity in the

* In the current number of the *Home and Foreign Review* there appears an article on General Average which will repay perusal. It is however disfigured by a too obviously insular tone, and by some inaccuracies, which show that the writer is not well informed on the recent history of the question. For instance, the meeting at Glasgow, and the efforts to prepare a uniform code of general average, are attributed to the Glasgow Chamber of Commerce, a body which, singularly enough, was one of the few public institutions connected with shipping interests not represented on the occasion. It is also averred that Lloyd's have held aloof from the proceedings; whereas we are bound to say that Lloyd's sent two representatives to the Glasgow Meeting, and that the committee of that important body had taken measures to be represented at the Social Science Congress in June last, (when the draft bill on General Average was discussed,) but that unfortunately the delegate chosen for the purpose was prevented giving his attendance by an unavoidable accident. This mistake in the article we have alluded to is so far satisfactory, inasmuch as it demonstrates that the writer, however competent in other respects, does not in any way speak the voice of Lloyd's, and is not even acquainted with the movements of its committee,—though some expressions in another part of the article might lead a hasty reader to a contrary supposition.

law and practice of general average amongst all maritime communities.

There are two distinct causes of the diversity which at present exists; one, that in some countries there is inconsistency in the carrying out of leading principles; the other, that there is difference of opinion amongst different communities as to the leading principles themselves; so that, assuming each to follow out its own principles consistently, there would still be a divergence in the results.

Of these causes, it would be comparatively easy to remedy the first; but the work aimed at by the committee would be incomplete unless both were remedied.

In the opinion of this committee, the object aimed at should be, to determine which among the leading principles propounded are the true ones, and to found a uniform system on the consistent application of those principles.

They think, therefore, that in order to prepare sufficient material for carrying out the objects of the committee, it ought to be determined, 1st, what ought to be the leading principles of general average; and, 2ndly, what is the true and self-consistent application of those principles to classes of individual cases.

They think that the following order of arrangement should be observed:—1st, to define the leading principles of general average; and, 2ndly, to consider in detail the more important disputed points; beginning with those which bear on the question, what claims are, and what are not, admissible as general average, either first as sacrifices, or secondly as expenditures, and passing on to those which concern contributing values and the mode of settlement.

SECT. II.—LEADING PRINCIPLES.

1. General average is a contribution made on behalf of property exposed to risk in a maritime adventure, to replace certain losses or expenses which have been incurred for the common benefit.

2. In order to found a right to contribution, the act which gives rise to such loss or expense must be one that is beyond the duties undertaken by the shipowner as carrier under the contract of affreightment.

3. Under that contract, the shipowner usually undertakes to deliver the cargo at its place of destination, in the like good order as when shipped, "the accidents of navigation," or words to the like effect, "excepted."

This undertaking must not be understood as meaning that the carrier is obliged to deliver the cargo unless the accidents of navigation prevent his doing so, *i.e.* make it physically impossible that he should do so; nor yet, on the other hand, is it to be understood as meaning that the mere happening of some "accident of navigation" shall be treated as releasing him from all obligation.

The true view, in the opinion of this committee, is, that upon the occurring of any accident, the carrier, by himself or his servants, is still bound to do what is "reasonable" towards carrying out his contract; but he is not bound to make any step which, though in his power, it would not be reasonable to require of him.

It is reasonable to require him to use, or suffer the use of, the ship and her tackling in that kind of service for which they were constructed, and this although the doing so may expose them to unusual risk. It is not reasonable to require him to destroy or permit the destruction of any part of either; nor yet to expose either to unusual risk in a kind of service for which they were not constructed. It is reasonable to require him to bear all ordinary expenses in the direct course of the voyage. It is not reasonable to require him to bear extraordinary expenses caused by a deviation from that course made for the common safety.

If the ship is damaged by an accident, it is reasonable that the shipowner should repair her at his own expense, and that he should do so as soon as he has the opportunity, without waiting till the end of the voyage.

Up to this point, they think that there is a common practice of the sea; in other words, such a general concurrence as may be taken as evidence of reasonableness.

They think it is reasonable, further, that when an article is by its own default the cause of the danger which renders its sacrifice necessary, such an article may be sacrificed without compensation.

4. All accidental damage suffered by the ship must be borne by the shipowner alone: all accidental damage suffered by the cargo must be borne by the cargo-owner alone.

5. Loss caused by an act which is not within the obligation of the carrier as defined above, and which is done for the common safety of the ship and cargo, must be made good as general average.

6. In order effectually to carry out Articles 4 and 5, it is necessary to have some rule which shall define to what extent the consequences, more or less remote, whether of an accident or of an act of volition, shall be ascribed to the accident or the act.

This rule should be the same for accidents as for acts of volition. That is, to whatever extent the consequences of an act of volition as above should be made good by contribution, to a corresponding extent should the consequences of an accident be excluded from contribution.

The rule which should be adopted for this purpose is, that no other consequences shall be taken into consideration except those which must follow the accident or the act by direct physical necessity, independently of any subsequent contingent event or act of volition.

It will be found upon examination that no less stringent rule will be adequate to keep the results of accident and those of acts of volition clear and disentangled from one another.

The great majority of general average acts take place as consequences of some previous accidental damage suffered by the ship—as jettisons, or putting into port, because the

ship has sprung a leak; and they are done under a species of moral necessity resulting from that accident. If, notwithstanding this, it is right that there should be a contribution, *i.e.*, that the morally necessary consequences of accident should not be connected with the accident, the same rule should be applied to the morally necessary consequences of an act of volition.

The maxim, *causa proxima non remota spectatur*, is applicable, therefore, to the international law of general average.

7. There is a difference of opinion on the following question:—

In order to constitute a general average act, should the motive for it be “the common safety,” in the sense of safety from the danger of total loss, or “the common benefit”—in other words, the completion of the common adventure?

Supposing, for example, that at a given point in the voyage some portion of the property is in physical safety, but that it is necessary to make some sacrifice, or incur some extraordinary expense, in order that the ship and cargo may reach their destination in company, ought the portion which was then so far in safety to contribute as for a general average?

The existing English practice is based on the opinion that it ought not. Some consider this opinion erroneous.

The argument in support of the English practice is:—

Contribution should be in proportion to benefit intended or derived. If the alternative of the act be a total loss, that benefit is represented by the full value of the property: if otherwise, it is represented by the difference between the position of the property in case the act be performed, and its position in case the act were not performed. In the case supposed, some portion of the property is already in safety, and consequently is either not benefited at all by the act, or at least not benefited (as the remainder is) to the full extent of its value. Consequently, such portion should not contribute, as to a general average, upon its entire value.

It has been argued on the other side:—

By the contract of affreightment, so long as it remains in force, the ship and cargo are so linked together during the voyage that neither of them can be said to possess any pecuniary value at any middle point in it; for the shipowner cannot withdraw his ship, nor the cargo-owner his cargo, so as to derive any pecuniary benefit from it, until the termination of the adventure. Hence an act, which has for its object the completion of the voyage, may be said to redeem both ship and cargo from a state of pecuniary worthlessness, and so to benefit both, together with the freight, to the full extent of their respective values.

To this it is answered:—The question, whether benefit has been derived from an act, can only be determined by supposing an alternative, and considering how the case would have stood had the act not been done. Here, had the act not been done, the contract, quoad the original ship, would have been at an end; for it would then have been impossible that the goods should have been carried in the original ship to their destination. In that case, some portion of the cargo would exist in physical safety, set free from the contract, and having some pecuniary value.

It is replied:—That is not so; but, if the act in question be not done, the contract still subsists, and all parties are therefore at a dead lock, for neither shipowner nor cargo-owner would have a right to touch his property. Hence, an act which removes this state of things is an act which benefits the whole property to the entire extent of its value.

It will be found that this controversy affects several practical questions.

SECT. III.—DEFINITIONS.

In conformity with the principles laid down in Sect. II. the definitions suggested are as follows:—

8. *A general average act* is an act which is outside the carrier's duty to the cargo under the contract of affreightment; which, in consequence of extraordinary danger, cannot

judiciously be left undone ; by which is contemplated extraordinary expenditure, or the sacrifice of such property as is not through its own default itself the cause of danger ; and for which act the motive is—

(On one view) the common safety of the ship and property on board.

(On the other) the arrival of the ship and cargo in company at the port of destination, or at the nearest port thereto which it may subsequently be found practicable for them to reach together.

9. *A general average* is a contribution which is to be made (the property sacrificed, if any, taking its share rateably with the part preserved) to replace whatever loss or expense is the direct and necessary effect of a general average act.

SECT. IV.—SACRIFICES.

Following the order of arrangement laid down in Sect. I. the committee passes on to the disputed points bearing on the question—what losses are, and what are not, admissible as general average. These may be divided into two classes—Sacrifices, and Expenditures.

A.—Sacrifices of Cargo.

10. *Cargo sacrificed on account of its vice propre.*—Cargo which is jettisoned or otherwise sacrificed because from its own putrefaction, or from sea damage suffered by it, it has become dangerous or unfit to be carried, as heated hemp jettisoned for fear of ignition, ought not to be made good by contribution.

For, the article is by its own default itself the cause of the danger.

11. *Jettison of deck cargo.*—In trades where there is a custom to carry goods on deck, as in the timber trade, and with live stock in certain coasting voyages, is the jettison of such articles allowable as general average ?

Some contend that cargo which is thus carried in its customary place, cannot be said to be in an improper place, and consequently ought to be made good if sacrificed. Others think that on account of the difficulty of determining the questions as to custom which might arise, deck-load jettison should be excluded in all cases.

Cargo carried in a poop or deckhouse which is built in with the frame of the ship, and cargo carried in the cabin, where the doing so is customary, should be treated as underdeck cargo. Cargo in temporary deckhouses, or houses other than the above, should be treated as on deck.

12. *Damage to cargo in effecting jettison.*—On principle, all damage which the cargo necessarily suffers as the effect of making a jettison for the common safety, ought to be treated as a part of the loss by jettison.

Hence, if a sea is shipped while the hatches are opened to effect a jettison, and the water going down the opening damages other goods, all damage which can be clearly traced to this cause is on principle allowable as general average.

As a rule of practical convenience, however, it would perhaps be well to exclude such claims, on account of the difficulty of proving the real cause of damage, and the abuses to which that difficulty may give rise.

Damage done to cargo from the derangement of stowage consequent on a jettison, as by chafing and breakage of flour barrels loosened by removing portions of the tiers, is not allowable as general average. This is on the ground that it is an uncertain and remote consequence of the jettison.

13. *Damage to cargo by a forced discharge.*—If cargo is discharged into lighters to float a stranded ship, or for a similar reason is thrown out upon a beach, and is partly lost or damaged, either in this process, or whilst being carried ashore in the lighters, such loss or damage, being the effect of an exposure to extraordinary risk for the common safety, is allowable as general average.

Ought the same rule to be applied, when goods are damaged

by being discharged at a port of refuge in the manner customary at that port?

With most kinds of goods, there seems to be no reason why such a discharge should necessarily cause damage; otherwise, all cargoes destined for the port in question, would necessarily arrive damaged, which it would be absurd to suppose. If, then, damage takes place, it must be through some accident or carelessness.

There are, however, some kinds of goods which require a peculiar mode of handling or treatment in discharging, such as can only be given at ports where the importation of such goods is customary. This is the case, for example, with salted hides. The discharge of such goods at a port where the proper treatment is not practised, necessarily involves the damaging of them.

This, however, is an exceptional case, and, in our opinion, it is expedient, though certainly a hardship on the owner of it, that this special risk, arising from a peculiar tenderness of the article itself, should fall on the proprietor of it, and not be brought into contribution.

On the whole, therefore, this committee recommend for adoption the Glasgow resolution of this head, viz.:—

“That the damage done to cargo, and the loss of it and of the freight in it, resulting from discharging it at a port on refuge in the way usual at that port with ships not in distress, ought not to be allowed in general average.”

14. *Damage to cargo in extinguishing a fire.*—On this head they concur with the Glasgow resolution, viz.:—

“That the damage done to ship, cargo, and freight in extinguishing a fire, ought to be allowed in general average.”

In estimating the damage done to cargo by water poured down to put out a fire, it would be proper to exclude such packages as were actually ignited when the water reached them.

15. *Loss on cargo by being sold to raise funds.*—In some

countries such a loss is allowed as general average. The committee consider that it should be treated like a bottomry premium, *i.e.*, should be apportioned over the expenses to defray which the cargo was sold.

The profit, if any, belongs to the proprietor of the goods sold, for the proceeds remain at all times his property.

B.—Sacrifices of Ship's Materials.

16. *Cutting away of wreck.*—When a ship's mast has been carried away, and the wreck is afterwards cut away because it endangers the ship and cargo, they are of opinion that the loss by cutting away ought not to be made good by contribution.

Some hold that this is correct on principle; on the ground that the wreck, under such circumstances, is to be regarded as the cause of danger, and, being as it were an intruder, may be got rid of without compensation.

Others, who dissent from this view of the principle, (arguing that the intrusion was involuntary and innocent, and that we should look to the state of facts at the moment of making the sacrifice, and not to any antecedent circumstances,) still concur in holding that such claims should be rejected, on account of the practical difficulty of setting a value upon articles in such a position.

17. *Damage by scuttling a ship to put out a fire.*—The committee are of opinion that all damage which necessarily follows such an act ought to be made good as general average.

It has been suggested that, on account of the difficulty of defining the extent of such damage, it would be well to limit the allowance to the mere repairing of the scuttle-holes, or other damage actually done in the act of cutting them. They are opposed to this limitation.

If a ship, when thus scuttled, subsequently suffers damage in a gale, this further damage ought not, they think, to be made good by contribution, although such damage might not

have taken place had the ship not been on the ground. For, of that damage, the gale is the direct cause, the scuttling only the remote occasion.

All damage, however, which is the result of ordinary weather acting upon the ship at any time whilst she is unavoidably aground after being thus scuttled, should be brought into general average.

18. *Damage by intentional stranding.*—If a ship is intentionally run ashore, to avoid capture or sinking, they think that, as a matter of pure principle, the damage caused by the running ashore ought to be allowed as general average.

When the running ashore is to avoid capture, they see no reason why this principle should not be carried out in practice. The extent of damage allowable should be determined on the principles laid down above for the case of scuttling a ship that is on fire.

When, however, the running ashore is to avoid sinking or stranding elsewhere, some are opposed to the allowance of such damage, on the following grounds:—They think that great abuses would be likely to result from such allowance. In the great majority of cases, intentional stranding means only putting the ship ashore in one place instead of another. This measure ought to be, and usually is, only resorted to when the situation of the ship is desperate. When that is so, the ship herself is really benefited by the act, so that it is scarcely accurate to say that there is a sacrifice of anything. There must frequently be extreme difficulty of determining what portion of the damage suffered by the ship, which in most cases was already leaky, is properly attributable to the stranding. Others do not think that these reasons are sufficient to justify a departure from correct principles.

If any plan could be suggested by which the admission of such claims could be guarded against abuse in practice, whether by limiting it to certain clearly defined exceptional cases, or by any other practical limitations, the committee would gladly take such a plan into consideration.

Two such plans have been suggested, neither of which appears to them satisfactory.

One plan is that laid down in the Glasgow resolution, and re-adopted in the "Projet de Code" brought forward by Messrs. Engels and Van Peborgh, viz.:—

"That, as a general rule, in the case of the (intentional) stranding of a vessel in the course of her voyage, the loss or damage to ship, cargo, or freight, ought not to be the subject of general average; but without prejudice to such a claim in exceptional cases upon clear proof of special facts."

The objection to this rule is, its extreme vagueness. What is an "exceptional case," and what are "special facts," are not defined. Unless this is done, it may be feared that an "exceptional case" will in practice come to mean, a case in which the ship is not insured. But, the moment one attempts to define either of these expressions, the extreme difficulty of framing distinctions which can be worked in practice comes into view. The Glasgow resolution therefore really settles nothing.

The other plan is that laid down in the new German Code, viz.:—

"When the ship has been purposely run ashore, but only if prevention of sinking or capture was thereby intended, the damages caused by the stranding belong to general average." But, "an average distribution is not made if the ship which has been stranded to avoid sinking is not got off, or after being got off is found incapable of repair."

The objection to this is theoretical. Whether the act of running the ship ashore is or is not a general average act, ought to be determined upon the facts existing at the time of running her ashore, not upon subsequent contingencies. According to the German rule, if a ship is slightly damaged by running her ashore, the loss is made good; but if a more

serious damage is done by the same cause, nothing is made good.

If it be determined that damage by intentional stranding shall be brought into general average, the committee suggest, as a practical limitation, that whenever a ship is run ashore because she is leaky, the entire cost of stripping, caulking, and resheathing, when this is done, shall be excluded from general average; on the assumption that, if the ship was leaky enough to justify the running ashore, these repairs would have been requisite in any case.

19. *Damage by carrying a press of sail.*—The act of carrying a press of sail, when this is requisite, whether to avoid imminent danger or no, should, they think, be held to be part of the ordinary handling of the vessel; and the damage thence resulting should not be made good by contribution.

SECT. V.—EXTRAORDINARY EXPENSES.

20. *Port of refuge expenses.*—When a ship, being in danger of total loss, owing to sea-damage, deaths or sickness of the crew, or want of provisions or water, is taken into a port of refuge, the act of bearing up for such port is a general average act; and this is so, whether the remote occasion of the ship's disabled state have been a sacrifice or an accident.

This follows from the rule as to consequences laid down in Art. 6. The putting into port does not follow from the disabled state of the ship "by direct physical necessity, independently of any subsequent act of volition."

There is a difference of opinion as to how far the consequences of the act of bearing up for the port of refuge should be made good by contribution.

This difference results from the difference of opinion, pointed out in Art. 7, as to what is the real motive for a general average act.

Those who hold that a general average act must be an act done for "the common safety," hold also that the act of bearing

up for a port of refuge is only a general average act in so far as it is done with the motive of placing the ship and cargo in safety; that "safety" means physical safety, or that state the alternative of which is a total loss; and that, when that state has been reached, the motive of that which is properly the general average act, has been completely attained; consequently that whatever is done subsequently must be done from some other motive.

Applying therefore the rule as to consequences which is laid down in Art. 6, they hold that the act of coming out of the port of refuge, and the expenses consequent on doing so, do not follow from the act of going into that port "by direct physical necessity, independently of any subsequent act of volition." In other words, the coming out of port is connected with the going in very much in the same way as the going in was connected with the previous accident; and if we are to have the same rule for tracing the consequences of accidents, and the consequences of acts of volition, then, since the going into port is held to be no part of the accident, the coming out again should be held to be no part of the going in.

Those who take the opposite view draw a distinction between the case in which the carriage of the cargo in the original ship ceases at the port of refuge, either because the ship is incapacitated from carrying the cargo farther, or because the cargo is unfit to be carried, and the case in which the joint adventure is continued. In the former case, they hold that the general average terminates so soon as the ship and cargo are separated from one another; but, in the latter case, that it continues until the vessel is again set upon her voyage.

The argument in support of this view is as follows:—The ship and cargo being bound together by the contract of affreightment, so that, if at any point short of the place of destination the ship is able to carry on the goods and the goods are fit to be carried, the shipowner cannot withdraw his ship nor the cargo-owner his cargo, it follows that at that point neither ship nor cargo are of any pecuniary value to its owner; and the only

legitimate way by which either can be restored to a state of pecuniary value is, by prosecuting the voyage. Consequently, on this view, the expense of reloading the cargo, and the outward port charges, are expenses incurred for the common benefit of the ship, freight, and cargo.

21. *Wages and provisions of the crew.*—When there is a general average from putting into a port of refuge, ought the wages and provisions of the crew, during the ship's detention, to be allowed as general average?

This item forms one out of a class of losses, incidental more or less directly to the putting into port, none of which are in this country, and none of which, except the item now in question, are in any country brought into general average. These are, the loss of the use of the ship during that detention, her wear and tear whilst detained, the loss of interest on the sale of the cargo from the prolongation of the voyage, and, in many cases, the loss of the season or of the market resulting to the cargo-owner from the same cause. All these are pecuniary losses; and all, with the exception perhaps of the last-named, are as directly and necessarily incurred in consequence of the detention in port as is the cost of maintaining and paying the crew.

On principle, therefore, it would seem that either none, or all, of these incidental expenses ought to be brought into general average. The item of loss of market may be more questionable: still, in the case of a cargo destined for a particular season—*e.g.* fish going to a Spanish port to arrive during Lent—the loss of market resulting from detention is as much a matter of certainty as any other of the items specified.

Some are of opinion that all these losses should be excluded from general average, as being merely incidental to, and not the direct effects of, the act of putting into the port of refuge.

Others dissent from this view on practical grounds; holding as an undeniable fact, that very often, where the wages and

provisions of the crew are not *bond fide* admitted, attempts, and in most cases only too successful, are made to bring these items into the account, under the denomination of labourage, &c.

SECT. VI.—THE CONTRIBUTION.

On this head there are only two questions which the committee think it necessary to consider in this report:—

22. *Contributing values.*—Ought contribution to be made upon the values ultimately saved; or ought it, in the case of expenditure, to be made upon the values as existing at the place where the expenditure was incurred?

Jettisons, and all sacrifices which are not replaced until the termination of the adventure, ought to be contributed for upon the ultimate values; that is, upon the values at the place at which the shipowner parts with the cargo. Ought the same rule to apply where there has been an outlay of money at a port of refuge?

In favour of taking the values on the spot, it is argued that:—

Whoever makes the outlay in question, does so as agent for all. The object of making it is to bring the property into safety, and that object has been attained. Consequently, the liability of each contributor really attaches at the moment when the payment is made. If the general average is not collected immediately, the delay is merely for practical convenience, and should not affect the results. But, if the parties are once liable, no subsequent event can take away or increase that liability. If the whole property is subsequently lost, the entire expenses ought not to be thrown on the person who may happen to have advanced the money in the first instance. If some of the property be subsequently damaged, that fact ought not to affect the proportion in which each contributes.

The value, at a port of refuge, of cargo which is destined for another place, should be, not its selling value on the spot,
 * its value at its port of destination, supposing no accident

on the way, but with a deduction for the expense and risk of conveying it thither.

On the other side it is argued that—

As a matter of theory :—The expense at the intermediate port is incurred with the motive of enabling the ship and cargo to reach their common destination. It is for the sake of this ultimate result that the expenses are incurred. This result, therefore, should in all cases be the basis of contribution. The liability to contribute cannot, if this be so, attach immediately on the incurring of the expense, because it cannot at that period be determined who are the parties really liable, that is, in what proportion each derives a share of that ultimate benefit, for the sake of which the expense was incurred.

As a practical question :—The rule of basing contributions on ultimate values is the more likely to work well. It would be difficult or impracticable in any event to recover a contribution to general average exceeding the value of the property ultimately saved. When goods arrive sea-damaged, it would in some cases be difficult to determine what portion of the deterioration has occurred subsequently to the sailing from the port of refuge.

The force of the practical argument is not denied ; but it would be well if the theoretical question could be determined.

This question depends on that raised above, whether the true motive for a general average act is to obtain physical safety, or the completion of the adventure.

23. *Deductions from freight.*—What deductions ought to be made from the contributing value of the freight ?

Theoretically, the committee think the deductions ought to be that portion of the crew's wages and of the port charges, the liability for which is contingent upon the earning of the freight. Consequently, advance wages, and port charges at the landing port, ought not to be deducted.

For practical convenience, some are in favour of deducting a uniform proportion of the freight, as representing these expenses.

On the whole, the committee do not think the practical difficulty sufficiently great to justify a departure from correct principle.

By order of the committee,

RICHARD LOWNDES, *Secretary.*

International General Average Committee,

15, Fenchurch Buildings, Fenchurch Street, London, E. C.

October 10th, 1862.

ART. IV.—THE OFFICE OF LORD-LIEUTENANT AND HIS DEPUTIES.

SOME two years since, Lord Lyttelton, the Lord Lieutenant of Worcestershire, being desirous of obtaining exact information as to the history of the office, and the duties of himself and his deputies, addressed a letter of inquiry on the subject to Mr. John Harward, clerk to the Lieutenancy of the county. Mr. Harward's reply, which was delayed by the difficulty experienced in obtaining the requisite information, has been communicated by his Lordship to the LAW MAGAZINE, and we have much pleasure in laying it before our readers as a minute and, we believe, trustworthy description of the origin and prerogatives of an ancient county office, passed over by Blackstone and other legal writers with a very cursory notice. We have prefixed to Mr. Harward's letter the communication addressed to him by Lord Lyttelton, as the latter contains the particular questions to which the former furnishes a reply.

LORD LYTTELTON TO MR. HARWARD.

Hagley, Stourbridge, 29th December, 1860.

DEAR HARWARD,

You have not yet told me what the Deputy Lieutenants are to do at their annual meetings. It seems to me that they

will sit and stare at each other. I am very much obliged for your promised sketch of the duties of a Deputy Lieutenant; but as you are about it I will ask you to extend somewhat the scope of it and make it include the legal relations of the Lord Lieutenant with his deputies, and indeed the legal position of the Lord Lieutenant now generally. I have always thought that legal position rather singularly indefinite, and that the real importance of the office rests wholly on mere usage and convention for which there is no written authority of any kind to be found in any book or document. For its real importance is—First, in the general pre-eminence which he is allowed, and which many people believe to extend even to his taking ceremonial precedence of the High Sheriff (which it certainly does not). Second, in his virtually appointing magistrates.

This, by far the most real part of his power, in fact has, I apprehend, no legal existence or sanction whatever. If anything, he does it, or is allowed and requested to do it, as "*Custos Rotulorum*," which is a distinct office from Lord Lieutenant. The proper duty of said *Custos*, as defined by the title itself, is utterly insignificant. So much for the civil duties. The military functions relating to the militia, yeomanry, and volunteers are of course legal and formal, as he grants the commissions. Now as regards these functions, the natural sense of the *Militia Act* of 1802 would be that Lords Lieutenant were actually for the first time created by that statute. I apprehend this is certainly not the case: but I should be very glad of any researches you may be able to make which would show clearly the legal origin and history of the name and military functions of the Lord Lieutenant. So about the Deputy Lieutenants. They, I am inclined to think, are really for the first time created by the *Militia Act*, and their duties and position for the most part expressly specified in that Act. I believe many persons think that they have no other legal functions or obligations but this, apart from mere orders of Secretaries of State, &c., which is clearly erroneous as to the statute law; for the *General Volunteer Act*, 44

Geo. III., cap. 54, imposes on them many specific implies a general obligation to see to the execution. There is, however, a point strictly of legal construction which I should be glad of your deliberate opinion. The 3rd section of the Militia Act, the Crown may authorise Deputy Lieutenants to do all such things as might lawfully be done by the Lord Lieutenant, and a similar power is given to the Lord Lieutenant himself by 46 Geo. III., cap. 90. Now remembering the object of the Militia Act, and the Volunteer Act in particular was subsequent to it, is the power limited to militia purposes? or does it include all the functions of the Lord Lieutenant whatever they may be. Also, in the 2nd section of the Militia Act, what is the force of the word "their" Deputy Lieutenants? Great deference and attention to instructions, &c., is always required by the Deputies to the Lord Lieutenant: but, as in the present matter, common usage and convention has so much to do with it that I should be very glad to know what legal claim there may be to require any such subordination from them. I have information on the general subject, as far as written authority is concerned, which you may happen to meet with I should be very thankful for.

Yours truly,

LYTTELTON

MR. HARWARD TO LORD LYTTELTON.

MY LORD,

I have at length the honour to submit to your Lordship my Report on the Offices and Duties of Lord Lieutenants and their Deputy Lieutenants. The time I have taken to prepare this Report, will, I fear, seem large indeed compared with the results embodied in it. The subject is, however, beset with difficulties, and it has received more meagre treatment than any other of like importance within my knowledge. A reference to the title, and a mere glance at the probabilities connected with its origin, are all the information afforded by the usual sources of ready information on like questions.

The origin of the office, like all those of ancient date, is involved in some obscurity, but I trace its root in the Anglo-Saxon Ealdorman or Duke. The word itself denotes both civil and military pre-eminence.

The powers and dignity of the Ealdorman doubtless differed in different Saxon races and kingdoms. This indeed was necessarily so from the connexion of this officer with territorial government. In 814 we find that the kingdom of Kent had three of these officers, whilst Mercia had sixteen. The Ealdorman was inseparable from his shire, and as conquest increased or diminished the number of shires comprised in a kingdom, so the number of these officers increased or diminished also. Every freeman in the county was bound to attend the Ealdorman's court and military muster.

The laws of Edgar enact as follows:—"Twice in a year be a shire moot held, and let both the Bishop of the shire and the Ealdorman be present, and there expound both the law of God, and of the world." This shire moot, or folk moot, was viewed with great reverence, and heavy fines were inflicted for any breach of the peace thereat. I may not omit to mention, by way of caution, that in the year 780 the Ealdorman of Northumberland was, by the other officers of the county, burned, because he had been guilty of cruelty and oppression in the exercise of his judicial functions.

In 825, an interesting trial took place at Worcester in the presence of Hama, the woodreeve, who attended for Eadwulf the Ealdorman. The public officers had encroached on certain rights of pasture belonging to Worcester Cathedral, and the Bishop, having given security, attended to make good his claim on oath. Other documents are extant showing that the Ealdorman really stood at the head of the justice of the county, and that he doubtless had the power of holding plea and proceeding to execution both in civil and criminal cases.

That the Ealdorman was the military leader of the county is equally clear; true it is that he had armed retainers of his own, but he was also the leader of the armed force of the

shire, and often we read of his leading, in Saxon times, the *posse comitatus*, or levy *en masse* of the freemen of the county, to repel invasion, or to exercise the functions of the higher police.

That the Sheriffs were at that time the Ealdorman's subordinate officers both in a civil and military point of view, I cannot doubt.

The Ealdorman's dignity appears to have been supported by grants of lands—which at first passed with the office—a share of fines and voluntary offerings, and, in addition to these, hereditary lands or personal grants from the Crown. In 855, Ealhhan, Bishop of Worcester, and his chapter, gave eleven hides of land to Edelwulf and his duchess, for life, on condition that he would be a good and true friend to the monastery.

The nobility, power, and wealth of the Ealdorman doubtless secured to him a brilliant position. The whole executive government, in fact, was an aristocratical association of the Ealdormen, with the King for President.

The appointment of the Ealdorman was part of the King's prerogative. The office was in general held for life, subject to expulsion for treason and other grave offences; but the appointment seems to have always received, and it indeed probably required, the sanction of the higher nobles, whilst the Ealdorman was installed by the superior shire authorities.

A great change, both in the supreme and local governments of the country, necessarily followed the Norman Conquest. The Ealdorman was, from his power, obnoxious to the new governments; but the same objection did not apply to his subordinate officer, the Sheriff, and hence the extinction for a time of the one office, and the increase in dignity of the other. The Sheriff, too, was popular with the people, who in him recognised at least a remnant of their former institutions.

The creation of the office of Custos Rotulorum, which relates exclusively to civil duties, was in part a return to the civil supremacy of the Ealdorman. This office is noticed much earlier than that of Lord Lieutenant, and it was clearly

in existence prior to the 25th Edward III., inasmuch as the *Custos Rotulorum* of the County Palatine of Lancaster is appointed by the Crown in right of the duchy.

The appointment to this office was originally vested in the Crown, by virtue of its royal prerogative as declared by the 37th Henry VIII., c. 1., and though transferred to the Lord Chancellor by the 3rd Edward VI., c. 1., was restored to the Crown by the 1st William & Mary, c. 21. The *Custos* is a justice of the peace, and by custom, if not by virtue of his appointment, the chief of the justices; for Lambarde, in his *Eirenarcha*, p. 371, says, that among the officers he hath worthily the first place, both for that he was always one of the quorum, for the most part picked out either for wisdom, countenance, or credit. Blackstone, in his *Commentaries*, Book 4, c. 19, s. 7, treats him as the first civil officer in the county.

The creation of the office of Lord Lieutenant was, I believe, in like manner a partial return to the military supremacy of Ealdorman. This office, according to Blackstone, was first created about the reign of Henry VIII., or his children, and superseded the old Commission of Array. Hallam, in his *Middle Ages*, Volume I., page 552, treats it as having been created in the reign of Mary; but this is probably incorrect, as the office of Lieutenant (which is the term generally used in Acts of Parliament) is recognised in the 2nd & 3rd Edward VI., c. 2. In the 3rd & 4th Phil. & Mary, c. 3, the same officer is called Lord Lieutenant. Hallam, too, treats the office as a revival of the ancient local Earldom or Comitatus, but does not cite any authority for it.

The office is treated both by Blackstone and Hallam as a military one; and the statutes above referred to, as well as the 13th Car. II., c. 6, have reference to the military defence of the realm. The latter Act was passed after the Restoration, to recognise the right of the Crown to the sole power and command of the militia; and by the 13th & 14th Car. II., c. 3, s. 2, the Crown is authorised to appoint Lieutenants for the different counties. As Lieutenants had clearly

been previously appointed by the Crown, I am inclined to think that this Act would be considered only as declaratory of the right to appoint Lieutenants, and it was probably passed in order to define and restrict that right; hence Lieutenants appointed under it were appointed only for the purposes of the Act, and the appointment consequently only confers upon them the power and duties defined by the Act itself. That Act was, however, subsequently repealed, and ultimately, by the 42nd Geo. III., c. 90, a similar power was given to the Crown, and under it the present Lord Lieutenants are appointed, and by it, their duties and powers are, I conceive, defined, except so far as further duties or powers are cast upon or given to them by the different subsequent Militia and Volunteer Acts.

Having thus shortly traced the origin of the two offices of *Custos Rotulorum* and Lord Lieutenant, I will endeavour to deal with your Lordship's questions, premising that of late years the two offices have been conferred upon the same person, who in common parlance is termed the Lord Lieutenant only.

I have been unable to find any direct authority for the general pre-eminence which is allowed to the Lord Lieutenant, but I conceive that such pre-eminence is in a great measure attributable to the office strictly so called, as although I find that the *Custos Rotulorum* is treated as first among the justices, (see *Lambarde supra*,) I do not find anything in that office which would be likely to give him general pre-eminence. Your Lordship is, I think, right in treating that pre-eminence as the creature of custom, but it is a custom in all probability based upon tradition of the early importance of the office. It clearly does not now give precedence over the Sheriff, who is treated by Blackstone and others as the first man in the county, and superior in rank to any nobleman therein. (1 Blackstone's Commentaries, p. 343, and Tomlin's Law Dictionary, citing Camden's Brit.) I am not aware of any express authority conferring upon the Lord Lieutenant

the right to appoint, or rather to nominate magistrates for his county. Strictly, all magistrates are appointed by the Crown at the discretion of the Lord Chancellor, (1 Inst. 174, 175,) and I conceive that the power or privilege exercised by the Lord Lieutenant rests merely in custom created as before-mentioned. It must, I think, be attributed, as your Lordship suggests, to the office of Custos Rotulorum, as it is at any rate probable that the power of nominating magistrates would have been delegated to the chief of the justices, as one of the chief civil officers, rather than to the chief military officer in the county, but I am not able to carry this point beyond conjecture. The official duties of the Custos, irrespective of his duties as a magistrate, consist in his appointing the clerk of the peace, and keeping the rolls or records of the peace of the county, as will be seen in Lambarde's Eiren., Book 4, and beyond these I am not aware of any duties incident to the office.

With regard to the existing powers and duties of a Lord Lieutenant, I am not aware of any official powers or duties unconnected with the defence of the realm, and the quelling insurrection, &c., and I conceive that all the powers and duties which he now possesses, or can be called upon to perform, have in a greater or less degree reference to the militia, yeomanry, and volunteers of the county. These powers and duties resolve themselves into two heads; the one consisting of the powers and duties of the Lord Lieutenant without the assistance of any of the Deputy Lieutenants, and the other of his powers and duties as forming the chief member of a meeting of the Lieutenancy.

As to the first of these heads, these powers and duties mainly relate to putting in motion the machinery of the Acts regulating the militia, yeomanry, and volunteers, and to calling them out under the direction of the Crown, either for the defence of the realm, or the quelling of insurrection, &c. The following statement will show what are the principal powers and duties thrown upon the Lord Lieutenant by those Acts.

The Lord Lieutenant has the appointment, subject to the disapprobation of the Crown, of the Deputy Lieutenants (42 Geo. III., c. 90, s. 2), and of the colonels, lieutenant-colonels, majors, and other officers of the militia (s. 2); has the chief command of the militia (s. 5); may, under the directions of the Crown, displace the Deputy Lieutenants and the officers of the militia (s. 17); has the appointment of, and the power of displacing of the clerk of the general meetings of Lieutenancy (s. 18). He, with two Deputy Lieutenants, can call extraordinary general meetings of the Lieutenancy (s. 21); may administer oaths required to be taken in the execution of the Act (s. 67); may act as commander of the militia when there is no other colonel (s. 72); may, with the approbation of the Crown, appoint surgeons to the militia (s. 78); may, on the recommendation of the colonel, appoint quartermasters (s. 79); may appoint additional drummers (s. 85); may join with the colonel or commandant in recommending sergeants, &c., for pensions from Chelsea Hospital (s. 86); may require carriages to be impressed for the militia on march (s. 95); shall embody the militia when directed by the Crown (s. 111 and 141), and shall issue orders accordingly (s. 114); when militia embodied, shall issue orders to the clerks of subdivision meetings to make returns of all persons enrolled (s. 129 and 141); shall issue orders for assembling the men (s. 130 and 141); shall appoint the first subdivision meeting for balloting (s. 132 and 141); shall transmit annually certified returns of the militia to the clerk of the peace (s. 157); shall give certificate to the clerk of the peace in case of deficiency of quotas (s. 158); may appoint, with the approval of the Crown, a Vice-Lieutenant during his absence (46 Geo. III., c. 90, s. 45); with approbation of Secretary of State, shall appoint places for exercises (15 & 16 Vict., c. 50, s. 28); may represent to Quarter Sessions that place provided for militia stores is unfit (17 & 18 Vict., c. 105, s. 2); in conjunction with colonel, may approve of purchase of storehouses (s. 4); when required by one of

the Secretaries of State, may unite portions of militia in two counties to form artillery corps (23 & 24 Vict., c. 94, s. 1); when required by one of the Secretaries of State, shall summon general meetings of the Lieutenancy to alter existing subdivision (23 & 24 Vict., c. 120, s. 1); shall appoint place for holding subdivision meetings (s. 5).

In addition to these powers, the Lord Lieutenant has the appointment of the officers of the yeomanry and volunteers, as the power seems to be recognised by the Volunteer Act of 1804, though not expressly given by it. He may summon volunteers in case of invasion, &c. (44 Geo. III., c. 54, s. 22), and on other occasions in case of riots, &c. (s. 23); may make orders for the assembling of yeomanry and volunteers on receiving orders from the Crown (s. 46), and shall certify the time and place to Secretary at War (s. 48); may submit rules relating thereto to the Crown (s. 56), and communicate approbation to commanding officer.

As to the second of these heads, the powers and duties devolving upon the Lord Lieutenant and Deputy Lieutenants in general meetings of Lieutenancy do not appear to be very extensive, but to consist in further carrying out the machinery of the Militia Acts; and among the principal of such powers and duties may be mentioned the following:—

The general meetings of the Lieutenancy shall consist of the Lord Lieutenant and two Deputy Lieutenants at the least; or on death, absence, &c., of the Lord Lieutenant, of three Deputy Lieutenants, and shall be held once a year; and the Lord Lieutenant and two Deputy Lieutenants, or three Deputy Lieutenants, may summon extraordinary general meetings, and general meetings may be adjourned (42 Geo. III., c. 90, s. 21); shall send notices of time and place of exercise of the militia to subdivision meetings (s. 90); may appoint special constables (46 Geo. III., c. 90, s. 28); may, when the Lord Lieutenant and three Deputy Lieutenants, or in the absence of the Lord^e Lieutenant, when five Deputy Lieutenants are present, alter, on the requisition or authority

of one of the principal Secretaries of State, the existing subdivisions (23 & 24 Vict., c. 120, s. 1).

Many of the powers which were previously vested in general meetings of the Lieutenancy were taken away by the 23 & 24 Vict., c. 120, which gave powers to the Privy Council and Secretary for War previously exercised by general meetings.

With regard to the Deputy Lieutenants, I think that they derive their powers solely from the Acts of Parliament relating to the militia, volunteers, and yeomanry, though the Deputies of Lieutenants are recognised in Acts prior to those which gave the Lieutenants power to appoint them. They were known long before the Militia Act of 1804, a somewhat similar Act of the 13 & 14 Car. II., c. 3, having given the Lieutenants a similar power to appoint Deputy Lieutenants. In that Act they were required to obey the orders of the Lieutenant; but the clause is not inserted in the 42 Geo. III., c. 90, and their powers being in a great degree independent of the Lord Lieutenant, I do not think that he can exercise any legal control over them, further than in taking proceedings to compel them to execute orders which, by the Militia and Volunteer Acts, he is authorized to issue. By custom and courtesy, he, as the superior officer, is entitled to receive general deference from them; but, beyond what I have referred to, I doubt whether he has any legal control over them, and am not aware of any authority in favour of such power. With regard to the powers and duties of the Deputy Lieutenants, I think that for the present purpose they may be usefully classed under three heads, namely, 1st. Their powers and duties in the absence of or vacancy in the office of Lord Lieutenant. 2ndly. Their powers and duties at the subdivisinal meetings; and 3rdly. The powers and duties vested in them, or a certain number of them, out of the subdivisinal meetings.

As to the first head, the powers and duties may be considered as, to a great extent, the same as those conferred upon the Lord

Lieutenant, and relate to putting in motion the machinery of the Militia Acts. Among them the following are the principal ones. Three Deputy Lieutenants can grant commissions to officers of militia (42 Geo. III., c. 90, s. 3); can do such acts as the Lord Lieutenant can do (s. 3); shall form a general meeting of the Lieutenancy, and may call extraordinary general meetings (s. 21); may join with the colonels in recommending sergeants for the Chelsea pensions (s. 86); shall embody militia on order from the Crown (s. 111); and issue orders for the purpose (s. 114). In the event of the Crown ordering out the militia, shall cause lists to be made of persons enrolled (s. 129); shall appoint first subdivision meeting for balloting (s. 132); shall muster, train, and exercise the militia pursuant to the order of the Crown (s. 142). Five Deputy Lieutenants may alter the existing subdivisions (23 & 24 Vict., c. 120, s. 1).

In addition to these powers relating to the militia, they may summon the yeomanry and volunteers in case of invasion (44 Geo. III., c. 54, s. 22), or assemble them on their application, with approbation of the Crown (s. 46), and shall certify time and place to Secretary at War (s. 48).

As to the second head, the powers and duties devolving upon subdivisional meetings of the Lieutenancy have more especial reference to enrolling volunteers for the militia and putting in force the provisions for the ballot. They are somewhat numerous; and the Acts point them out very much in detail. They will be found principally to consist of the following:—

Subdivisional meetings shall consist of at least two Deputy Lieutenants, and if two Deputy Lieutenants do not attend, one Deputy Lieutenant and one justice of the peace may act (42 Geo. III., c. 90, s. 22); shall appoint and may displace the clerk to such meetings (s. 18); may add two or more lists together, and determine disagreements between parish officers relative thereto (s. 34); shall accept volunteers specified (s. 42); shall make inquiries as to persons fraudulently bound apprentice, examine persons on oath, and appoint persons so bound to serve in the militia (s. 49); shall cause men to be examined

by a surgeon (s. 52); shall discharge persons chosen by ballot who are unfit, and cause others to be chosen in their place (s. 53); shall cause vacancies on death or promotion to be filled up by ballot (s. 59); on receiving orders from general meeting, shall call out men for exercise (s. 90); shall ballot for men in the place of men who absent themselves and do not return or are not taken within three months (s. 100); shall cause men willing to remain in the militia to be enrolled as volunteers (s. 124); in case of default being made for three months when the whole number enrolled shall have been called out, shall fill vacancies by ballot (s. 128); shall fill up vacancies in case of desertion, &c., by ballot (s. 135); shall accept certain volunteers specified (s. 136); may require their clerks to make out accounts of moneys received and paid by them (s. 139); shall cause vacancies in established militia to be filled up out of supplementary militia in case of their being disembodied (s. 148); shall apportion numbers of men among parishes on receiving numbers appointed to county by the Privy Council (46 Geo. III., c. 90, s. 4); may exempt Quakers from serving on payment of fine (s. 20); may appoint special constables (s. 28); shall transmit list of volunteers to general meetings (15 & 16 Vict., c. 50, s. 17); may require the attendance of a surgeon on application of persons claiming to be exempt by reason of infirmity (17 & 18 Vict., c. 109, s. 32); subdivision meetings shall be held on the first Wednesday in October, in every year, at eleven o'clock (23 & 24 Vict., c. 120, s. 6); shall accept volunteers under section, 42 Geo. III., c. 90 (s. 10); shall direct names of persons exempted from service to be struck out of lists made by overseers, and insert names wrongfully omitted, and shall fix the number of militia men to serve for each parish, and appoint meeting for ballot, and direct overseers to give notice (s. 11); may require the attendance of overseers, &c. (s. 13); shall cause twice the number of men required to be chosen by ballot, and enter their names in a book, and fix another meeting (s. 14); at next meeting shall hear claims of exemp-

tion, and decision shall be final (s. 15); after striking out names of exempted persons, shall cause remaining persons to be examined, sworn, and enrolled, the Secretary for War providing a surgeon for the purpose (s. 16); shall adopt the course previously described in case there are not a sufficient number chosen at the first ballot (s. 17); shall supply vacancies if required by Secretary for War (s. 18); shall accept substitutes (s. 20).

In addition to the above powers and duties relating to the Militia Acts, the subdivision meetings are to deduct the number of yeomanry and volunteers from the number of men liable to the ballot (44 Geo. III., c. 54, s. 16), and enter on a certain list the persons chosen by ballot who are in the yeomanry and volunteers, and give them notice of being so chosen (s. 17); at a meeting where five are present, may reward clerks for trouble caused by the Volunteer Acts (s. 54).

As to the third head, the powers and duties classed under this head relate more especially to minor details, and are given to individual Deputy Lieutenants, so that they may act by themselves without having recourse to the subdivisional meetings, and are chiefly as follows: One may administer oaths to and require the name of volunteers to be enrolled (42 Geo. III., c. 90, s. 44); in case of loss or destruction of lists, any two or more may cause new lists to be made out and returned at next subdivision meeting (s. 46); any two or more may provide substitutes for Quakers (s. 50), and may join with commanding officer in discharging men becoming unfit to serve (s. 55); one may convict substitutes or volunteers who do not appear to be sworn (s. 62); two may order the money agreed to be given to a substitute to be paid to him (s. 63); two or more may apply penalties for refusing to serve or find substitutes in providing substitutes (s. 66); one may administer oaths (s. 67); two Deputy Lieutenants may join with colonel in recommending sergeants for Chelsea pensions (s. 86); one may require carriages to be impressed for militia on march

(s. 95); two may order half the price of volunteers to be paid by the parish officers to persons chosen by ballot who serve or find substitutes, and are not worth £500 (s. 122); three shall submit certified returns of the militia annually to the clerk of the peace (s. 157), and are generally to assist in raising volunteers for the militia (17 & 18 Vict., c. 105, s. 36); one may take declaration as to amount of income with a view to reducing fine for not serving (46 Geo. III., c. 90., s. 17); two may exempt Quakers from serving on payment of fine (s. 20); two, or one and a justice, may exempt persons from serving by reason of bodily infirmity (s. 23); any two or more may issue order for attendance of constables, &c. (23 & 24 Vict., c. 120, s. 13); two or more may imprison persons refusing to be examined as to their fitness for service (s. 22).

The foregoing appear to me to be the chief powers and duties of the Lord Lieutenant and the Deputy Lieutenants of a county, as more especially pointed out by the different Acts of Parliament relating to the militia, yeomanry, and volunteers; but I conceive that they are all bound to assist in the general carrying out of the spirit of those Acts, though it is impossible to lay down any particular rules for their guidance without having my attention directed to some particular point. With regard to the point alluded to in the commencement of your Lordship's letter, it will be borne in mind that at present the militia ballot is suspended, so that there are not likely to be many subjects for any general meeting to take into consideration, even supposing that such meeting is authorized to be held, which, looking at the frame of the 27th section of the 23 & 24 Vict., c. 120, may admit of doubt, as that section enacts that all general meetings relating to the militia shall be suspended. In ordinary cases, when the Militia Acts are put in force, the duties cast upon the general meetings by the Acts will furnish occupation for the members assembled; and in addition to those duties, I conceive that at such meetings there may be general topics relating to the carrying out

of the *Militia Acts*, which may be usefully discussed; that such discussions may result in action by the meeting, so far as the Acts of Parliament authorize the same, or they may be communicated to the Government, as the resolution of any other meeting, for their consideration. At the present time, I should be disposed very much to concur with your Lordship, that the members assembled at a General Meeting of the Lieutenancy will have little more to do than your Lordship suggests.

It remains for me to deal with the legal questions propounded by your Lordship. With regard to the meaning of the word "their" Deputy Lieutenants in the 2nd section of the 44 Geo. III., c. 90, I think that it must be read as referring to the Deputy Lieutenants appointed by the Lord Lieutenant of each particular county; and with regard to the other point, I am inclined to think that the three Deputy Lieutenants appointed by the Crown, and the Vice-Lieutenant appointed by the Lord Lieutenant, can exercise all the legal powers of the Lord Lieutenant; but, as will be seen from what I have before stated, these powers relate almost, if not altogether, exclusively to the militia, yeomanry and volunteers.

The above remarks appear to me to meet, as far as I am able, the points alluded to in the letter of your Lordship; but I should wish it to be understood that I do not consider that I have at all exhausted the subject, as to do so would involve much more time than I have been able to give, and would require almost exclusive attention for some considerable period. I believe that what I have stated will be found to be correct in the main, but looking at the number of Acts relating to the militia, and the frequent repeal or modification by later Acts of prior ones, it may be that some few of the powers and duties mentioned by me in detail have been repealed and modified. In addition to this, I should state that other powers may possibly be conferred upon the Lord Lieutenant and Deputy Lieutenants by other statutes relating to other subjects of which I am not aware, but to ascertain this would involve an

examination of the whole Statute Law, and would take up more time than I could well devote to the subject.

I have the honour to be, my Lord,

Your Lordship's most obedient and humble servant,

Stourbridge, September, 1 1862.

J. HARWARD.

THE RIGHT HON. THE LORD LYTTTELTON.

ART. V.—EXTRACT FROM LORD BROUGHAM'S LETTER TO THE EARL OF RADNOR.

BROUGHAM, *October 15th, 1862.*

BUT as to the last session in its legal and law-amending aspect, it really must be allowed to have done more than might have been expected, considering the degree in which all men's minds were absorbed by the cruel, unjust, and unnecessary civil war of the Americans, the distressed condition of Lancashire, the struggles of the Italian Kingdom, not to mention the distraction of our great International Exhibition. Some really useful amendments of the law were effected, of no great pretensions; for the less unassuming ones are far from being undeniable improvements.

The Parish Assessment Act, without introducing any new principle of assessment, secures a uniform rating throughout unions, and is a considerable step towards a general equality of rating. The opposition which local interests and prejudices successfully made to the Highway Act, causing its rejection no less than fourteen times, is, as Mr. Cox, the able and learned conductor of the *Law Times*, observes, a good proof of its value; and we may expect that, sooner or later, our highways, both parish and county, will be placed on a good footing, so as to give us no longer a reason for envying our neighbours in France their department of *Ponts et Chaussées*. Mr. Cox has given a full and useful analysis of another valuable Act, that for the punishment of Fraudulent Marks on merchan-

dize, an offence by which our commercial character has suffered exceedingly.

Of the amendments having greater pretensions there are two of importance, but having grave defects, which materially detract from their merits. The Lunacy Act, wisely giving in cases of importance the aid of a Judge having more authority than the Commissioner, arose from the Windham Case; and though the Commons rejected an absurd provision excluding medical evidence, the restriction of the inquiry to two years remains, and is highly exceptionable. The Joint Stock Company Consolidation Act, though a great improvement, has two defects of a serious kind. There is no specification of what constitutes membership of a company, a want likely to encourage endless litigation; and the command to publish yearly balance-sheets is confined to banks and insurance companies, instead of extending, as it clearly should, to all.

But the Act of by far the greatest pretension, for facilitating the transfer of real estate, is by many experienced persons expected to prove a failure. Certainly, such a bill should have been subjected to the fullest discussion, both of professional men, through whose instrumentality it must be worked, and of the community at large, for whose dealings it is intended. There could have been no harm whatever in a year's delay, for letting the plan be considered during the long vacation, and no use in hurrying such a measure through Parliament at the end of the session. The great Incorporated Law Society urged strong objections to it, alleging that it was permissive, and no one with a good title would take advantage of it, and holding that it would be inoperative except in creating offices with large salaries. I am very far from concurring in all the objections made, and still less in the sarcasm which has been ventilated, that the bill was hurried through in order to provide a set-off to the Bankruptcy Act, which has proved a total failure. This failure is fully admitted, and by all; but I consider the attempt to improve our conveyancing as conscientiously made, and heartily wish it may succeed, though I have stated

now, as I did at the Social Science Congress, the objections to its hasty enactment, and my preference for the plan repeatedly presented in the shape of bills, extending to estate of every kind the procedure with customary property, by which, as Mr. Fawcett has explained from his large experience in customary courts, the cost of conveyance of the largest estate does not exceed a few shillings, and the dispute of a title is almost unknown.

But all the defects in late measures, and the great occasion for legislation upon other matters, as well as for arrangements in our judicial procedure requiring no new law, though imperatively required, lead to the absolute necessity of a department for performing the duties of Minister of Justice. Such a department would have prevented the omissions and bad provisions in the recent Acts, and would secure the proposal of measures required, beside the inestimable benefit of presiding over the preparation of all bills, with the consent of the Government and of individual members. We are indebted to Mr. Napier, the able and excellent ex-Chancellor of Ireland, for his persevering efforts on this subject in different sessions as long as he continued in Parliament. In 1853 and 1855 he met with little support; but in 1856 he obtained the consent of the Commons to a modified resolution. The year after his triumph was complete. He carried, all but unanimously, an address for the establishment of a separate and responsible department of Public Justice, supported strongly by Lord Palmerston and Lord John Russell, who recommended the Queen to return an immediate answer that the "subject should receive that attentive consideration which its importance demands." I therefore naturally, before the end of the session, called for information as to what had been done in the five years since the "attentive consideration" had been promised; and a private communication from a leading member of the Government apprises me that nothing whatever has been concluded. It may, however, be hoped that this important step, so strongly recommended by the Commons and by the two chief Ministers, will at length

be taken; and there is assuredly no lack of duties for the department. Nevertheless, even if the establishment of it should be delayed, some of these duties are so urgent that they must be discharged without such help.

One of the most pressing requires no legislative interposition. Experience, but especially of late, has shown clearly that the circuits of the judges must be newly cast. Some, as the Norfolk, and perhaps the Midland, are too small. Compared with the Northern, or even the Oxford and the Western, the disproportion is enormous. The division of the Northern is absolutely necessary, and may be effected without increasing the number of the judges, by uniting Yorkshire with the Midland. Lancashire and the four northern counties would be quite a sufficient circuit. A single judge would be sufficient for the Norfolk, unless part of the Home Circuit were thrown into it.

There are great objections to altering the ancient division of the kingdom into counties; but the Recorder of Birmingham, our learned, able and excellent friend, Mr. Hill, when he set forth the hardship of prisoners being sent from a great distance, suggested that they might be committed for trial at the nearest assize town, this optional power being given to the committing magistrate. This would require an Act.

You have lately seen a scandal in Scotland; the agitation over great part of the country on the subject of a conviction for murder. Petitions for pardon, numerous signed, are sent up, and a meeting was held at Glasgow, attended by thousands, to pass resolutions in favour of such an application nominally, but really against the learned judge and respectable jury who tried the indictment. The Home Secretary, in whose department the consideration of such a petition is, happens to be a lawyer; but this is a mere and a rare accident. His two predecessors were not; and I do not recollect an instance of a lawyer in practice holding that office. Ought not this and all such cases to be brought before the Department of Justice? But this case, and the scandal of the agitation

upon it, in all probability never would have arisen had the attempt I so often made succeeded, to extend my Evidence Act to defendants in criminal cases, on their desiring to be examined, and of course subjected to the sifting of cross-examination. It is plain that the woman convicted would have desired to be examined, and her sifted testimony would either have led to an acquittal or confirmed the verdict; in either case the public mind would have been satisfied. The only objection ever urged to this extension of the Evidence Act is, that any party declining to take the benefit of the law would be supposed to be guilty for that reason. But surely the judge could explain to the jury how consistent such a refusal is with innocence, arising, as it oftentimes would, from the party's want of confidence in his own presence of mind to stand a cross-examination. We must recollect, too, that the existing law allows the examination of defendants compulsorily and without any option in quasi criminal cases, as actions for assault of the worst description, or false imprisonment, or for libel. Lord Denman and Lord Campbell were so much struck with this inconsistency, that they inclined strongly to support my bill, if confined to cases of misdemeanour in which the opposite party was examined for the prosecution.

The want of a Public Prosecutor has been often complained of, and in addition to all the instances of this defect given in my friend Mr. Phillimore's Committee, recent cases have put our inferiority to Scotland in this respect in a very remarkable light. A swindler, for example, having, beside obtaining money on false pretences, committed several forgeries, was not tried for the felony but only for the misdemeanour, which he confessed. His connexions were in good circumstances, and it was urged for him that it was a first offence, and that he was only twenty-three years of age. No Public Prosecutor would have resorted to such plea to excuse his breach of duty. Some years ago I recollect an anchormith of good property forging to a large amount, and he found means to pay the recognizances of the party bound over to prosecute, and so escaped.

There are other things which we may very wisely borrow from Scotch procedure. Where the jurisprudence of two countries differs in fundamental principle there can be no mutual interchange. Thus the law regulating the title and conveyance of real estates in France, Scotland, and England, is so entirely different, that the one country cannot borrow from the other. But in procedure it is quite otherwise, and each might greatly profit by the imitation of the others. France, for example, in much that relates to criminal procedure might most advantageously borrow from us, as we might from their criminal appeal system. So Scotland has borrowed our trial by jury in civil cases with great advantage; and we have adopted, from the Scotch, the important principle of local jurisdiction, though as yet very imperfectly. The allowing trustees remuneration is another superiority of their procedure, and ought clearly to be adopted in England in all cases where the constitution of the trust does not expressly preclude it; but with the remuneration should be coupled more stringent obligations, such as the requiring yearly accounts. It is certain that the interests of parties under trust suffer much more constantly from the negligence and even inaction of trustees than from their dishonesty.

I have mentioned the great subject of local judicature, and the vast improvement of our judicial system by the County courts. It is with the most unqualified satisfaction that I observe their success. Last year there were nearly half a million of causes tried by those courts and only seventeen appeals; but the number of actions brought was nearly 900,000, for £2,220,000, so that half of them were settled without going to trial. It is difficult to over-estimate the benefits of such a system to the community, and especially to the working classes. That the jurisdiction of the courts ought to be considerably enlarged, seems evident. In Scotland the local judge has nearly unlimited jurisdiction; and one among other benefits derived from hence, is the facilities thus afforded for the choice of judges in the higher tribunals. It is well

known how often a great advocate proves an indifferent judge. But if the option were given to parties to select the county court for trying their cause, a test of judicial capacity would manifestly be afforded by the comparative resort to the courts. All my attempts to extend the jurisdiction and to make the optional clause operative, failed. But my disappointment was far greater in the rejection of my proposal, often made, of introducing the process of Reconcilement, on which I have more than once addressed you. Can any one doubt the effect of both parties going before an experienced and impartial person, clothed with judicial dignity, and stating their several cases for his advice without the interposition of professional men? It must lead to the abandonment of most of the groundless claims and desperate defences, and the settlement of more than half the actions now brought. And such is the result of the plan wherever, as in Denmark, it has been fairly tried. The whole community, but most of all the humbler classes, have an immediate interest in this improvement, which will save them from being sacrificed to the profit, not of the more respectable branches, but the worst of the legal profession, the harpies who deform and defile it. As often as this has been propounded, it has been met by technical objections, but not one whit more strenuously than my original proposal of County Courts, or the great Evidence Act, the judges themselves joining in the opposition; and yet thirty years have sufficed to refute the one set of objectors, and a much shorter period to convince and convert the others; so that the learned judges have candidly confessed how great a help is afforded to the discovery of the truth by hearing the parties themselves as well as their counsel. Not one of the objections to Reconcilement is more strongly urged, or more plausible in itself, than those I had to encounter on County Courts and the Evidence of Parties.

But now, my dear friend, we are dwelling upon the improvement of the law and the great benefits which the community derives from it. We have both of us, from the

very beginning of the century, anxiously devoted ourselves to protect the rights of the people and promote their improvement, without the least regard to the combinations or the movements of party; and, Heaven be praised! we have had success enough to cheer us. Even at the present hour we are comforted by the spectacle of those who suffer the most severely, conducting themselves with exemplary patience, and perfect abstinence from all outbreaks, and even all discontents; so unlike the working classes of forty years ago under far less pressure. This is manifestly the result of their advance in knowledge, and better comprehension of the causes of the distress. But while our prospects at home are thus comfortable, abroad, in most quarters, the aspect of affairs is truly painful. Mischief is brewing in one part of Germany that may endanger its internal tranquillity, and even shake the general peace; while priestly intrigue in France may have the same sad result, by the maltreatment of Italy. A gloom is thus cast over the prospect of the future in Europe; but in America the view of the present is as distressing as possible. Of the grievous civil war now raging for above twelve months, with the utter disregard of human life and of public credit, it is difficult to speak so as not to offend either, nay, perhaps both parties, of whom one seems bent upon an impossibility. But at least let us hope that the imputation is groundless which would represent the Northern States as prepared to inflict upon their adversaries, and upon humanity itself, the only aggravation whereof the deplorable contest is capable, by exciting an insurrection of the slaves. Such a calamity is more to be dreaded by the friends of that unhappy race than by those of their masters, for the chief sufferings would be theirs; and we might, on their behalf, have to address the more numerous and better armed body of the whites, and to exclaim,

Tuque prior, tu parce, genus qui ducis Olympo :
Projice tela manu, sanguis meus !—

Nor let it be imagined that when the war shall happily cease, its

evils will be at an end, either for the Americans themselves or for others. Armed men in hundreds of thousands will remain, inured to slaughter, incapable of subordination, impatient of peace—their own government will be less secure than ever and all colonies will have a bad neighbour.*

ART. VI.—THE GLASGOW MURDER.†

AFTER nineteen minutes' deliberation, fifteen men, composing a Glasgow jury, returned a unanimous verdict, finding Mrs. Jessie McIntosh, or Maclachlan, guilty of the murder of Jessie McPherson, in the house No. 17, Sandyford Place, Glasgow, on the evening of Friday, the 4th, or the morning of Saturday, the 5th of July, 1862. Lord Deas, in passing sentence of death, intimated his decided concurrence in the verdict, and complimented the jury as being "as intelligent as any he had ever seen in a box." The foreman of the jury thanked Lord Deas for "the comfortable manner in which they had been accommodated," with which he had nothing whatever to do, and then the judge and the fifteen jurymen separated to sleep. They were very unanimous—most wonderfully unanimous for Scotchmen, who cannot readily be

* I observe that much attention has of late been bestowed upon the subject of Colonial possessions, and great pains have been taken to discuss their drawbacks and advantages. Sixty years ago I fully explained their great benefits in a work upon the subject. It was much esteemed by our friend Windham, notwithstanding what he called its heresies on the Slave Trade, upon which he always had the most unfortunate prejudices. As the book has been long out of print, and I have always refused to publish another edition, I rather think I must have an abridgment prepared of the chapters which set forth the importance in every view of Colonies to the Mother Country, showing the relation in which they stand to her, and exposing the various errors of those who undervalue them.

† Full reports of the trial were published in the *Scotsman*, *Glasgow Herald*, *Courant*, and other leading Scotch newspapers. There is a separate report in a pamphlet form, published by J. H. Hastings, Glasgow, which seems tolerably good, except that it contains fictitious portraits. We have used the *Scotsman* report for the most part as the most trustworthy.

found to agree to the number of fifteen upon any question where it is possible to form two opinions. But from that hour to this there have never come together sixteen men who were of the same unanimous opinion as Lord Deas and his jury. Regarding the guilt or innocence of Mrs. Maclachlan, the intelligent opinion of England, Scotland, and Ireland is in great perplexity, while the less intelligent opinion of Scotland, at least the opinion of the lower orders, is in no perplexity at all, but has, in the proportion of at least twenty to one, settled that Mrs. Maclachlan is innocent, and another person is guilty. Glasgow, as a city, has gone almost insane upon the subject, (it says not a little for the great heart of Glasgow, that a desire to see justice done to a sailor's wife can convulse it so,) and several members of its population have gone altogether insane. Not the mere vulgar students of murder for the sake of the terrific are called upon to attend to a phenomenon like this, a phenomenon which has arisen, as it has done, upon one of the most, if not the most perplexing case of circumstantial evidence known in the annals of crime. We have thought longer than nineteen minutes about it, and have come to some ideas, if not to some conclusions, on the subject, which we shall try to unfold; premising, at the outset, that we feel it very difficult to fix on the best point at which to attack so very complicated a subject, but have chosen to start from an historical narration of facts, appending brief comments as they seem to be required, and then balancing, as we best can, the weightiest matters of evidence.

On the afternoon of Monday, the 7th July, Mr. John Fleming, accountant in Glasgow, on his return from his country-house at Denoon, to which he had gone on Friday, found in his house his father, a very old man, whom he had left in it, and his son, who had entered a few minutes before him, and learned from them that his single domestic servant in this town-house, by name Jessie McPherson, had been missing for three days. His father had been in the house all the time,

cooking his own food, and doing whatever was necessary for himself, and he had made no inquiry whatever about the servant further than to try her bedroom door, which was locked, but had waited for the return of his son, expecting always, as he said, that the servant also would return. His grandson had arrived a little before his son, and as soon as the latter arrived, the young man told his father that the servant "was off, or was lying downstairs dead." They all went to her room door, and Mr. John Fleming, the master of the house, tried the key of the store-room door in the lock, and it opened it. Her dead body was lying on the floor on its face, almost naked, with a cloth thrown over the upper part of it. Doctors were called in, and the police, and it was found that she had died from a number of wounds on the head, caused by a bluntish cutting instrument. There were traces of blood on the kitchen floor, and very visible stains of blood on the back of the door, and the "jaw-box," and a trail along the passage as if the dead body had been drawn from the kitchen to the room. The floor of the kitchen had been washed, or partly washed, apparently at different times, and part of it was not dry when the police and doctors were called in, and was dry two hours afterwards, the floor being of a hard bluish stone which dries quickly. The floor of the room in which the body was locked had been partially washed, as had also the upper part of the body about the head, neck, and breast.

The washing of the floor, and the conduct of old Mr. Fleming in remaining so long in the house by himself without seeking after the servant, at once directed suspicion to him, and on Wednesday he was apprehended in virtue of a warrant from the Sheriff, and committed to prison. The day before his apprehension his son had discovered that various articles of silver plate were missing, and on the same day it was found that they had been pawned by a young woman who gave the name of Mary Macdonald, who received on them the sum of £6 15s. The young man who received the articles had paid little attention to the woman, and could give only an imperfect

description of her. But somehow or other, Mrs. Maclachlan, the intimate friend of the murdered Jessie McPherson, who had been twice examined regarding the murder by the Procurator Fiscal, (the official who collects and reports evidence to the Lord Advocate as Crown-prosecutor,) was at last fixed on, and rightly as it has turned out, as the pledger of the plate, and on Sunday was taken into custody. The clue that guided the police to her has not yet been made public, nor has the date of its discovery, and nothing can be known with certainty regarding it; for the whole investigation was conducted by the Glasgow officials with so little integrity and openness, and so much of the dexterity and cunning of pettifoggery, that it is not at all improbable that Mrs. Maclachlan was suspected almost as early as old Fleming, that she was twice examined by the Procurator Fiscal merely to entrap her, and that she was watched during the week she was at liberty. At all events, she was easily proved to have been wandering about the fields near Hamilton, a small town ten or twelve miles from Glasgow, and to have placed there at various places certain shreds of cloth, which had been saturated with blood, and which were sworn to have been fragments of two petticoats and a gown usually worn by her. She was called upon on three occasions to make what is called in Scotch law a "declaration," which is in theory a voluntary statement by a prisoner charged with a crime, in reference to his or her connexion or want of connexion with that crime; but is in practice a reply to a series of questions put by the Procurator Fiscal in presence of a magistrate to the prisoner, secluded from all advice, for the purpose of entrapping him or her into admissions of complicity or guilt, or into the telling of lies, which are construed to be evidence of guilt, because in Scotland all innocent persons are presumed to speak the truth. Mrs. Maclachlan told lies in her three declarations; perhaps led into a snare, being too simple and polite to hold her tongue when a gentleman like the Procurator Fiscal was pressing her to answer questions. She had told a woman who used to wash for her

that she was going on the night of Friday the 4th July to see Jessie; and her lodger, a Mrs. Campbell, proved that she was out of the house on that night, and that she (Mrs. C.) had to rise to attend to the prisoner's child, who cried at five in the morning; and also that a rum-bottle found in a press in Mr. Fleming's house was like one belonging to her, which it was assumed Mrs. Maclachlan had carried with her. There were three bloody prints of a naked left foot left after the washing of the room floor in which Jessie McPherson's dead body lay. The parts of the board on which they were found were cut out, and the doctors caused Mrs. Maclachlan to dip her naked left foot in blood, when the print of it on a board corresponded with those which had *not* been washed out in Jessie McPherson's bedroom. She had carried off some of Jessie McPherson's clothes with her, and sent them by the railway to Ayr to lie till called for. She had told her husband about this as well as about the pledging of the plate. The ingenious Fiscals had him also apprehended as being guilty of the murder, although they had good reason to believe that he was out of Glasgow on the night in question, and had no reason to believe the contrary, and by this scandalous device they seem to have succeeded in getting him to make a declaration in which he gave them all the information that he had derived from his wife, and then, after they had succeeded in this trick so far as they desired, they liberated him, having professed to find out what they knew, or ought to have known all along, that he was in Ireland on the night of the murder. And so by one means and another, partly fair, partly unfair, the evidence was gathered together which was considered sufficient to demonstrate that Mrs. Maclachlan alone was guilty of the murder of Jessie McPherson, and after eight days' confinement, the old man, Mr. James Fleming, was set at liberty.

The whole evidence, extending into many details, (too numerous to mention,) was fully laid before the public in a trial at the Circuit Court of Glasgow, which occupied four days in September, and the jury, with the approbation of the

presiding judge, Lord Deas, or as many prefer to affirm, at his instigation, after nineteen minutes' deliberation, returned a verdict unanimously finding Mrs. Maclachlan guilty of the murder of Jessie Macpherson, and of the theft of her clothes and of Mr. Fleming's silver plate. After the verdict, and after the Advocate-Depute had "moved for sentence," Mr. Andrew Rutherford Clark, the Sheriff of Inverness, who had acted as counsel for the prisoner, stated that he understood the prisoner had a statement, either to be made by her own lips, or to be read by some one for her. Lord Deas said she was at liberty to make it in any way she preferred; whereupon the prisoner, who had sat quite still during the trial, with her veil down, threw her veil off her pale face for the first time, and in a calm, clear, earnest voice, said, "I desire to have it read, my lord. I am as innocent as my child, who is only three years of age." It was then read to a breathlessly attentive court by Mr. Clark, and when it was finished, the prisoner was ordered to stand up, and Lord Deas proceeded to pronounce sentence of death, in a tone of voice and with a manner which are universally reported to have betrayed no kindness or compassion. He told her that her statement conveyed to his mind "the impression of a tissue of as wicked falsehoods as any to which I ever listened." In spite of not a little respect for Lord Deas, whose rapidity and clearness of intellect, indomitable pugnacity and energy, extensive law learning, and capacity for reaching on fitting occasions a very high level of judicial eloquence, entitle him to a most conspicuous and honourable place among Scotch judges, both living and dead, we cannot but believe that his "impression," so roughly announced to this poor woman standing under the very shadow of the scaffold, is as false as any part of her statement can possibly be: and that in truth this statement contains the most authentic narrative that most probably will ever be given of the mysterious Glasgow tragedy. A tissue of lies it is not, for it fits completely into the whole evidence. There may be *one* very great and very wicked lie in it, but there

is not more than one of that character. The suspicion that has been thrown upon it since the trial is not that it is a tissue of lies, but that it is a tissue of truth with one lie ingeniously interwoven, and that it has been concocted by her agents and adapted to the evidence after they knew it all. That view may possibly be correct, but we do not believe it. We learn on good authority, that her agents are three young lawyers of ability above the average of their profession, of highly respectable connexions, and the prospect of almost certain success in their business of law-agents. They have worked for the poor woman it is said, not a little from motives of charity, for she and her relations are too poor to pay; and it is all but certain that they would not have risked their chances of success in life, to put the matter no higher, by telling to the world a deliberate lie. They say that the substance of the statement was communicated to them in August, so soon as she was assured of the liberation of Mr. Fleming, regarding whom she had said, oftener than once, that he "would surely clear her," and had expressed her surprise that he did not do it, with the most convincing appearance of sincerity. But whether fabricated by the agents or not, it has given a shape to possibilities which the jury ought to have taken into account, and in the meantime it has obtained a respite from death of the unfortunate woman. Although it may be false in one vast particular, it contains the truest and most concise account of the essence of this case, and our chief regret with regard to it is that we have not space to print it entire. The reading of it occupied forty minutes. It is full of the most Defoe-like circumstantiality of detail; and if untrue, it is capable of being contradicted at many points.

The substance of this statement is, that on the night in question she called on Jessie McPherson after 10 o'clock, having delayed till that hour to allow the old man Fleming, who was jealous and inquisitive, to be in bed; that she found being let in by Jessie that he was in the kitchen beside

her; that a little after eleven he sent her out for half a mutchkin of whisky; that she found the whisky-shop shut, and on returning without the whisky found the back door of the house also shut; that she knocked and received no answer, and knocked again with the lane-door key, and at last old Fleming opened the door; that she found that during her absence Jessie had been struck by him and cut across the forehead and nose, and was lying on the floor of the laundry, which was her bedroom, insensible; that she bathed her face, and washed away the blood, and that in a while Jessie returned to consciousness, and told her that the old man had struck her; that a fortnight before he had come into her bed during the night and attempted to take liberties with her; that she had threatened to tell his son, and that he had begged that she would not, and seemed uneasy at these threats; that she had shut him out of the laundry, and that he came back and in a passion struck her suddenly; that the prisoner nursed her during the night, helped her to bed, and on her feeling cold helped her to the kitchen, as she was weak and unsteady on her feet, and made a kind of bed for her before the fire; that she did not wish a doctor, and did not seem to be apprehensive about her wounds; that about break of day Jessie seemed to turn worse and to faint away; that she proposed to go for a doctor, but the old man seemed averse, and said he did not know where a doctor was to be found, and that he would go down and see how Jessie was, and whether a doctor was necessary; that while she was upstairs trying the front door, and looking out at a back window to see if any one was stirring in the neighbouring houses, she heard a noise downstairs, and on running down, saw the old man finishing the murderous work he had begun; that he alleged as his reason for this second and fatal attack that he knew she could not live, and that if a doctor came he would be brought in for her murder; that she promised not to tell and was induced by him, partly as a bribe, and also in order to produce the appearance that the house had been robbed, to take the articles of silver plate and some

of Jossie McPherson's dresses; that while she was in the house, and some time before she left, the milkboy came to the door, and that the old man went upstairs to answer, and came down without milk; and that she left the house by the back door about eight or half-past eight o'clock, reached her own house about nine o'clock, and was let in by her lodger Mrs. Campbell.

The difficulty of concocting this story in all its details, will strike every intelligent reader, and it will become doubly apparent to any one who will take his pen in hand and try to remodel or abridge it. That it is in all respects a probable or satisfactory statement we cannot say, but the verisimilitude of it is very surprising, as also the manner in which it accounts for much that is mysterious in the case. For instance, what is more remarkable than for the body of a murdered person to be partly washed? But the apparently unexplainable fact becomes intelligible in the light of this statement, and that which could only be the whimsical performance of a lunatic murderer, is seen to be the work of kindness of some one for the time at least not intent on murder. No doubt it is possible that after striking the first rash blow she may have endeavoured to revive her friend, and after she thought recovery hopeless, she may, from that dread of discovery which she imputes to old Fleming, have gone on to murder her. So that if there had been nothing explained by that statement but the washing of the body, the dreadful weight of evidence that presses against her would not have been much lightened. It would have shown that the murder was not deliberate, as was otherwise shown by her announcing the intended call on Jessie that night to the woman whom she desired to come and keep her child. Indeed, had old Fleming not been in the house that night, and had his conduct been less peculiar, and less at variance with his proved character, and all human probability, the verdict of the jury might have been considered as free from reasonable doubt, and as justified he whole body of the evidence.

But fortunately for Mrs. Maclachlan, it may be unfortunately for the ends of justice, old Fleming's conduct was such as to subject him to very heavy suspicion, and let us say at once that after the best consideration we have been able to give the whole evidence, we are deliberately of opinion that the balance of probabilities hangs about evenly between him and Mrs. Maclachlan; or, in other words, that the proof of his guilt is as strong as the proof of her guilt. The facts that weigh heaviest against her we have already noted, and of them all we think the blackest was the haste with which she pawned the silver plate, and sent the gown of her deceased friend to the dyer. The appropriation of the clothes showed, it must be confessed, no inconsiderable callousness of feeling, and her poverty, from improvidence or other causes, was such as to render the £6 15s. which she received for the silver plate no inconsiderable object to her. But then it must be remembered her poverty was not of a temporary character, but had lasted for years; it was the motive for her crime on the hypothesis of her guilt; and if the £6 15s. worth of silver plate was an adequate motive to commit a murder, it was no less adequate a motive to conceal a murder that had been committed. But if she did commit a murder for the sake of plunder, why did she carry off so little booty? There were surely more than £6 15s. worth of portable valuables in the house of a gentleman in the position of Mr. Fleming the accountant? Was there no more silver plate than that, no jewellery, no bed and table linen equally portable with Jessie McPherson's black silk dress and plaid, and much less likely to be identified, of which Mrs. Maclachlan, who had been a servant in the house, must have had some knowledge? Why carry off these dresses of Jessie McPherson's at all, except that one which was thrown over her own bloody clothes? Does it not almost appear that here the semblance of a robbery had been achieved on the most economical principles, and with results the least favourable to the robber? If plunder was the motive of this murder, why spend time

in washing the floors so long as there was a locked drawer or press in the house to open and ransack?

The old man, who was examined as a witness on the trial of Mrs. Maclachlan, stated that on the morning of Saturday, the 5th of July, he was awakened by a "lood squeel," (*i. e.* a scream,) "an odd kind of squeel," and after that he heard other two not quite so loud; that he jumped out of bed but returned to it as he heard nothing more, took his watch from under his pillow and saw that it was four o'clock of a "verra clear mornin," and that he soon fell asleep and slept till six; that he wondered that Jess did not come as usual to his bed with his porridge and milk at eight o'clock in the morning, and that he lay till nine, when he arose, went down stairs and knocked at the servant's door, but received no answer, and found that it was locked. He admitted that that night he took his shirts that had been washed and dressed off a screen in the kitchen which had been laid or pushed over against the pantry door, and that two of his shirts were marked with blood, but on cross-examination he denied that he knew the marks were blood, but said that he thought they were paint or iron-ore. However, it is to be mentioned in passing, that two of these bloody smears on the shirts were about the size of a hand-breadth, and could not have been mistaken by any one of ordinary intelligence. He further admitted that although he had heard the screams, and found the servant gone and her door locked, he gave no alarm, and never mentioned to any one that the servant was away, but went on making his own bed and cooking his own food during Saturday, Sunday, and Monday, until his son's arrival. Manifestly, the combination of apparent candour and of superhuman carelessness in these statements is very perplexing. He did not require to admit, it would seem at first sight, that he heard screams at four o'clock in the morning, which ought to have helped to incite him to inquire after the servant and have her room door opened at the least, nor is it easy to conjecture how, if Mrs. Maclachlan was the murderess, she should have deferred her

deed of darkness until broad daylight. But her statement does suggest some reason for this admission on the part of the old man, for she says, that it was about that time of the morning that he finished the murder, and that she screamed and called out "help, help." He is, according to his own account, "very deaf," but, if her statement be true, he would hear these screams, and perhaps he might think that some one outside had heard them and that they were so loud that it would not do to deny that he also had heard them. The excuse set up for this three days' apathy on the part of Mr. Fleming senior, is, that he is eighty-seven years of age, that he had been a weaver in his youth and did not require the attendance of a servant, and that Jessie McPherson was not his servant. But, unluckily for this excuse, it was proved that his curiosity was far from torpid; that he had got out of bed to see who rang the door-bell; that he watched all the servants in the most offensive manner, acting as a spy upon their visitors, and asking where they had been and what they had been doing whenever they left the house, and that Jessie McPherson enjoyed a special share of his attentions. In truth, the best and only feasible excuse for his conduct lies there: and it is this, that he may have supposed that Jessie McPherson had left the house to escape his indecent importunities, and was ashamed to mention her absence on that account. Whether he was eighty-seven years of age or not was far from being satisfactorily proved, but it is certain that he did not look nearly so old; also, that he collected the rents of a property, week by week, inhabited by some of the greatest profligates in Glasgow, and had vigour of mind enough for that business; and further, that within the last three years he underwent a rebuke according to the Scotch fashion, before the kirk session, for being the father of an illegitimate child, born to him by a domestic servant. Lord Deas, in his charge, thus disposed of his abnormal curiosity and the epithets applied to him because of it: "The reason for his being an old devil or an old wretch was that he was very inquisitive; nobody could come to see them without

his knowing of it; they could not bring in their friends without his knowing of it. I do not say how far that was proper or not; but you will judge if that does or does not go deep into a man's character in a charge like this. I say you will judge how far that goes to prove that the old man is likely to be a murderer." In this small specimen of his lordship's charge there is recognisable a touch of that most unjudicial special pleading which characterized the whole of it, setting up evidence against the prisoner that was defective, and explaining away whatever was in her favour. The question for the jury was not whether looking curiously after servants "goes to prove that the old man was likely to be a murderer," but whether he would live for three days in the house alone with the servant absent and her door locked, and take no means to discover what had become of her. And if he could so suppress his usually offensive curiosity, for what purpose did he suppress it? Was it because he knew all already? And if he knew all, how and when did he come to know?

A still more damaging circumstance against him than his astonishing, and all but incredible carelessness, was his behaviour towards and concerning the milkboy who came every day with milk. He stated on oath that on Saturday morning, the morning of the murder, he lay in bed until nine o'clock, and at first he denied that that morning he had seen the milkboy at all. But the milkboy proved, and his master who remained with the cart corroborated him, that he called at Mr. Fleming's house between half-past seven and twenty minutes to eight on the morning, and that the old man, for the first time, answered the door at once, and said that no milk was wanted. The old man had sworn that he used to receive his porridge and milk in bed at eight in the morning, that he wondered that Jess did not come, and that he was not out of bed until nine in the morning. How that can be reconciled with the fact that he was up before eight in the morning, that he answered the door at once, and that he said that no milk was needed, and that *never* before that morning

had milk been refused at that door, has not yet been attempted by Lord Deas, or any other who holds that the "old gentleman is free from all suspicion." If Mrs. Maclachlan's agents are to be believed, she had told them of this call of the milkboy early in August, before they had seen or heard of the milkboy; and it does not appear that the public prosecutors were apprised in time of what he could prove, or old Mr. Fleming would have been warned against tumbling into such a frightful pitfall. To the question how she should have known of the call of the milkboy, and that no milk was taken, there is only one credible answer, so far as we can see, and that is that she must have been in the house at the time; and it is very improbable that she remained there, running the risk of detection in the most needless manner, without old Fleming's knowledge. How he should know that the servant required no milk, and be so ready to answer the door for her before his usual hour of rising, and why the regular supply of milk should not be taken into that house only on the three mornings that she lay dead in it, have not yet been explained on the theory of his innocence.

Another fact spoken to by the milkboy is not much less adverse to him. The milkboy heard him take the chain off the door before he opened it. Now he had sworn that the chain was not on the door, and that it was merely on the sneck, and that whoever had gone out had gone out by it. The theory of his innocence which he had to swear to was that the murderer had gone out by the front door, which he found standing on the sneck at nine o'clock in the morning—a theory which does not well agree with his taking off the chain at twenty minutes before eight in the morning. But according to Mrs. Maclachlan's statement his taking off the chain is natural enough, for no one had left the house at this time; so that fact also is confirmatory of her statement, and strongly condemnatory of old Fleming.

There is yet another point of evidence of the same character, and that is the washing of the floor of the kitchen and bedroom.

The floor of the kitchen seemed to have been washed at different times, and when the police surgeon and the police were called in, a part of the kitchen floor was damp, and it was dry two hours afterwards. Who did that washing? Not Mrs. Maclachlan, for no one alleged that she had been there from Saturday morning. If she washed the floor she must have done it all at once. It is therefore as certain as anything proved by circumstantial evidence can be, that she did not wash the floor. Indeed she had no reason to do it, if she went there merely to rob the house, and commit murder if necessary to allow her to rob. A robber who had been under the necessity of committing murder, would hardly stay to wash the floor, but would take what booty he could find and decamp at once. But the theory of the Crown was, that although Mrs. Maclachlan probably heard old Fleming jump out of bed in the room above her, when she was hacking her friend to death in the room below, she stayed to wash the kitchen in order to avert the suspicions of the old man, whom she was supposed to have calculated upon giving no alarm for three days! But has the Crown any theory for the washing of parts of the floor of the bedroom in which the dead body was locked up? No suspicion could be averted by that; for after the bedroom door was opened the murder was disclosed. But on the floor of that bedroom there were three foot-prints left marked in blood. They were quite visible. No attempt had been made to wash them out. They were undoubtedly the foot-prints of the prisoner. If she washed that floor, she did it after four o'clock of a July morning, when it was broad daylight, and when she must have seen these foot-prints. For what better purpose could she have washed the floor than to have washed them out? For what better purpose could old Fleming have washed part of it than to have washed out his own and left Mrs. Maclachlan's there to testify against her should he happen to be suspected? Whether these three bloody foot-prints were left intentionally or not, the washing of the floor was much more like the act of one who was to

remain in the house, than of a thief who was to leave it as fast as possible ; and it is certain that the washing of the floor which had not dried when the police came in, could not have been done by Mrs. Maclachlan. A policeman on the beat swore that he saw two women coming out of the house on Saturday evening between eight and nine, and that the prisoner was not one of them. But Lord Deas disposed of his evidence by asserting that he had mistaken the number of the house. One of the most favourable circumstances for old Fleming, indeed, we may say, the circumstance that has saved him from being in the condemned cell of Mrs. Maclachlan, is, that there was no blood on his clothes ; as it was on the other hand a damning circumstance against her, that there was a great deal of blood upon her clothes ; those shreds of clothes that she had endeavoured to dispose of, by dropping them in the fields about Hamilton. But for her, there is this to be said, that there was a great deal too much blood upon her clothes for simple murder. They were saturated with blood, and that they would not have been although she had hewed Jessie McPherson to pieces. In that case a few spurts of blood, showing themselves in isolated drops, most likely on the upper part of her dress, is all that could have been expected. The saturation of her petticoats is rather confirmatory of her statement, that she came into contact with this blood in nursing and not in wounding her friend. The spots of blood that start out upon a murderer from his victim, seldom go through the outer dress, and they alight on those parts of it that are nearest the limbs that are engaged in wounding. But what are the parts of this woman's clothes that are produced with marks of blood on them ? Not the sleeves and body of her gown. A sleeve of the gown in which she is assumed to have committed the murder is produced without any blood on it—not one spot. The bloody rags that are produced are her petticoats, and as we can gather from the evidence, the flounced skirts of her gown and her crinoline. And the stains of blood are not the spots that bespeak actual murder, but the

saturation that would necessarily happen to nursing, and which might happen to one cleaning away blood. In short, her clothes, if duly considered, prove her innocence rather than her guilt. They prove that her connexion with this deed of blood was an innocent connexion in so far as they prove anything. Much stress is laid upon no clothes of old Fleming being found with blood on them, but it ought to be remembered that he had three days to dispose of his bloody clothes. If Mrs. Maclachlan had not taken the most infatuated way possible to dispose of her clothes, she too might have been in the position of having none with blood on them. Perhaps, however, some of them might have been not accounted for, to her possession of which her lodger and her washerwoman and other acquaintances could swear, as they did to the rags found in the fields. But who can tell that all old Fleming's clothes are accounted for? who knew what clothes he had? Most likely only Jessie McPherson.

If his son knew, it does not seem likely that his son would speak out, and there was nothing to hinder the old man during the three days he was alone, with a full coal-cellar and a large kitchen fire at his disposal, from burning an entire suit of clothes and a great deal besides. Mrs. Maclachlan says she saw him burn his bloody shirt in the kitchen, and after the trial it turns out that a detective found a button among the ashes, and gave it to the Fiscals, but they suppressed that bit of evidence. There is a part of the wood-work of the kitchen missing. Surely Mrs. Maclachlan had no reason to dispose of that, just as little as she had to wash the bedroom floor and the cleaver.

The conduct of old Fleming at the time the body was discovered might have been very important either for him or against him if observed by strangers. But of the impression it made we have only one uncertain glimpse. His son told the doctors and the police that there was a key in the inside of the door of the servant's room, that he pushed it out with the store room key, and that he heard it fall on the floor. He afterwards denied that he had done so and said he must have been

mistaken; but the reverse was clearly proved by the doctors and by the police, one of whom went to look for the key, and told Mr. Fleming that he could not find it. This story of the key in the inside of the door was of course a suggestion that the door had been locked from within, and of suicide. And why should Mr. John Fleming have suggested suicide if he did not suspect his father?

There are many other points too numerous to mention in detail, or to mention at all; such as the multitude of the wounds, there being no less than forty of them; also the character of the wounds. If simple murder to facilitate theft was intended, and the attack had been begun during her sleep in bed, as Lord Deas suggested, why not cut her throat, or kill her at a blow? The police surgeon said that some of the wounds had the appearance of being inflicted after death, but how long he made no attempt to estimate. Must they have been inflicted more than three hours and a half after death and after four o'clock on that July morning? And there are other questions, such as whether Mrs. MacLachlan had time to wash the kitchen, and the room, and the cleaver, and the sheet, and to rifle the house, all in three hours and a half? And whether her remarkable statement corresponds with the appearances the doctors and the police observed in the house, or is inconsistent with them? So far as we can judge from the materials in evidence it is not inconsistent with them, but the reverse.

Regarding the administration of criminal law in some foreign countries, we should hesitate to be censorious, because their barbarism would be their excuse; but Scotland is a country comparatively civilized, and is therefore inexcusable, and we cannot choose but say, that the investigation regarding this murder reflects very little credit upon the practice of criminal law in Scotland. The police alone seem to have done their work respectably and not to have merited public reprobation. But the Procurators Fiscal were too keen and unscrupulous. The public opinion seems to be that they

The Glasgow Murder.

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it all to deal besides. Mrs. T.

bloody shirt in the kitchen.

A detective found a button

in the Fiscals, but they supposed

it was a part of the wood-work

of the house. Mrs. MacLachlan

said she had no idea of the

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suppressed evidence that might have been favourable to Mrs. Maclachlan. For example, it is said that they concealed the shirt button found by a detective among the ashes of the kitchen fire, and a bloody hammer found in Jessie McPherson's bedroom. In these particulars they may be misrepresented; but certain it is that they had Mrs. Maclachlan's husband taken into custody as guilty of the murder when they had no reason whatever to believe in his guilt, simply to extract from him, by taking his declaration, whatever information they could which could guide them in collecting evidence against his wife. Lord Deas had no word of reprehension for this infamous obtaining of information upon false pretences; for a false accusation of murder, either known to be false or not believed with some sort of reason to be true, is a false pretence of the most infamous kind; but it will be for the Crown and for the public mind of Scotland to say whether the ends of justice are worth attaining by such dishonourable means, and whether it is worth while to punish crime at all, if in doing so it is necessary to sacrifice honour and morality. The Advocate-Depute, Mr. Gifford, was upon the whole fair and temperate. His speech was disfigured by ludicrous spurts of bombast, but it treated the evidence with considerable impartiality for a Scotch prosecutor, and was vastly more judicial than the charge of Lord Deas. But there is one little trick in Mr. Gifford's conduct of the cause which we think it our duty to expose, and that was gliding over in silence the weak points of his case. Hardly any of those mentioned by us were fairly grappled with by him. The dampness of the kitchen floor, for example, when the doctors and police were first called in, and the fact that it was dry two hours after, showed that it must have been washed on that day, and by some one else than the prisoner. This circumstance was most favourable to her, but neither Mr. Gifford nor Lord Deas said a word about it, apparently thinking it best to be silent regarding what they could not explain in accordance with their own theory of the evidence,

which is a very easy and ingenious way indeed of propping up a theory. We might condemn this sort of thing as uncandid; but we presume it must be agreeable to the taciturn, cautious, and metaphysical character of the Scottish people, or it would not be tolerated in those who are honoured to serve the Crown as counsel, or sit on the bench as judge. According to the exact theological language of the North, this kind of sin is a sin of omission, and a very venial sin it seems to be; for the Advocate Depute, no doubt eminent in his profession, or he would not hold the position he does, had, in a question of life and death, neither the courage nor the candour to admit many of the circumstances favourable to the prisoner as an English counsel for the Crown would have done, but either evaded them or passed them by in silence, considering that sort of conduct to be prudent and discreet. His speech has been greatly more praised in Scotland than that of Mr. Clark, who conducted the defence, and which seems to us superior. Going upon Burke's principle, that "print settles all," which is, indeed, all we have to go upon, we cannot but think the style of Mr. Clark's speech far less objectionable than that of Mr. Gifford. It is not a strong speech, nor does it touch upon some of the strong points of his case; and it is too evidently extempore, and spoken without that careful preparation of passages which Lord Brougham so forcibly recommends to orators. But it was spoken at the close of the third of three long days, when body and brain must have both been almost tired out, and yet the arguments are forcibly put and judiciously disposed, and the style is clear, nervous, lawyer-like, and at least free from school-boy bombast. No doubt he was much hampered by the "statement" of the prisoner. What to do with it he must have had great difficulty in deciding; whether to put it in at the beginning of the trial as a special defence, or to read it as part of his speech, or to reserve it, as was done, against a verdict of condemnation. He has been widely censured for so reserving it, and for not, thereby, putting "the prisoner's case"

to the jury, and thus in a sort of way suppressing the truth. We can see his reason for doing so was the hope that the Crown would fail to prove that she was in the house at Sandyford Place that night, and that the evidence would break down where it broke down in the case of Miss Madeleine Smith—in the want of proof of opportunity to commit the murder. No doubt that hope was frustrated. Had it been otherwise his skill and boldness would have been commended. After the failure of a plan nothing is more natural and easy than to condemn it. We leave that simple work to others, being unable to pronounce an opinion, and say that Mr. Clark, whom Lord Deas spoke of as one “of the ablest counsel at the bar of this country,” did not decide for the best. He was not bound to disclose that she was in the house that night. The prosecution was bound to prove it. The only violation of truth of which a counsel for the prisoner can be guilty is, not the concealment of adverse facts, but the assertion of what he knows to be false, and we have not read aright if Mr. Clark did not exhibit more candour than most others connected with this trial and its antecedents.

The conduct of Lord Deas has been almost universally censured, and we are sorry to be compelled to join in that censure against a British judge, of high talent, and of undoubted zeal in the discharge of what he believes to be his duty. Instead of maintaining a proper judicial equilibrium, and holding the balance of justice even, he put his foot fiercely into one scale, and kicked at the other. We shrink from the tedious and unpleasant task of analysing his charge; we leave it to the judgment of every intelligent professional and non-professional reader. Others may find in it what we have failed to find. It lasted four hours, and from beginning to end of it there is not one observation favourable to the prisoner; not one fair consideration of a doubt in her favour; not one suggestion that any fact renders her guilt a matter of the least doubt. On the contrary, facts that in our humble opinion tell strongly in her favour, are either quietly ignored, or disposed of by reckless assertion

or the most transparent sophistry. A policeman saw two women come out of the house on the Saturday night. He must have mistaken the number of the house. The old man said that the chain was not on the door, and then that it was on. A man often puts the chain on the door, and forgets about it. The milkboy heard the chain taken off the door. It must have been something else he heard. Jessie McPherson some days before her death told a married female friend that she was very unhappy in Fleming's house, that the old man was an old devil, and that she had something to tell her which she could not tell in presence of this friend's husband. This mysterious something which female delicacy would not allow her to talk of in presence of a man was her intention of going to Australia! And after this fashion his Lordship disposes of all evidence favourable to a prisoner tried for her life. No advocate who could be replied to would dare to be so reckless in argument, or rather in assertion, for argument must always commend itself somewhat to the reason of others. We believe that it is common, too common, for some Scotch judges to act the part of "senior counsel for the Crown," and to forget their dignity so far as to beseech juries to return verdicts of guilty on very insufficient evidence. This excessive loyalty seems to be peculiar to the Scotch character. The late Lord Campbell introduced a modified and comparatively inoffensive form of it into England. He used to boast of his success in obtaining convictions, and talked with patronizing complacency of such eminent toxicologists as "Dr. Christison, whose able assistance I had in the trial of Palmer for poisoning." But such undue bias is unbecoming to the bench, unfair to the Crown, and dangerous to the subject, and we hope that the public censure which has fallen upon Lord Deas, who had, and will still have, some reputation to lose, will act as a warning to smaller occupants of the bench who would be more mischievous if they had half his ability.

This remarkable trial, whatever judgment may be finally formed upon its circumstances, seems to us a conclusive

instance of the mischief done by our present rules of criminal evidence. If Lord Brougham should re-introduce his Bill for admitting the voluntary testimony of prisoners, subject to cross-examination, he will find in the trial of Mrs. Maclachlan a formidable argument for his measure. Whether we believe her innocent or guilty, it must be equally the subject of regret that she was not able to tell her own tale to the jury. If innocent, she would have given a straightforward account, and might have boldly challenged Fleming with the murder, with the certainty that cross-examination would have strengthened her case, as it nearly always does that of an honest witness. If guilty, she would probably have betrayed herself, and have removed from the public mind all doubt as to the justice of the verdict. What can be less reasonable than to refuse the testimony of a prisoner when you have the power to test its accuracy, and to accept it at the first moment when it can pass uncontradicted? Is the subsequent private inquiry (when obtained) to be compared, in point of justice or efficiency, with the thorough sifting of every disputed point in open court?

To review and if necessary correct the unanimous verdict of the jury, the Secretary of State has been appealed to by petitions from all the chief towns of Scotland, signed by tens of thousands. He has respited the prisoner until the 1st of November, and has ordered a full investigation into facts. But for this investigation there is no machinery. Sir Archibald Alison, the Sheriff of Lanarkshire, has been presiding as a sort of self-appointed King Log at the examination of witnesses, but what is to be done with their evidence, no man pretends to know. More recently the Lord Advocate Moncrieff has appointed Mr. George Young, Advocate, as a special commissioner to preside over this investigation. To this appointment there can be no objection, for Mr. George Young is at the head of the Scottish Bar, (omitting the Lord Advocate, and the Solicitor-General Maitland,) and the Lord Advocate being a party to this investigation, it will be his duty to support the verdict. But for this he might himself have been

trusted by the public to conduct the investigation. This strange enigma, and the no very suitable means for solving it, taken in connexion with other cases, suggest the question whether there ought not to be in this country a tribunal analogous to the French Court of Cassation, to correct the errors of our criminal courts. There may be prisoners in whose fate the public may not be roused to take an interest, and who may die unjustly because no popular appeal has been made to the Secretary of State for them. Moreover, an appeal to the Secretary of State is too difficult; as a tribunal of review he is too inaccessible. His modes of obtaining information are irregular, and the information on which he decides is not published. He is, too, overwhelmed with other work, and cannot readily afford time to investigate a matter so mysterious and complicated as that in which the guilt or innocence of Mrs. Maclachlan is involved. Of course we do not suggest the creation of a Scotch Court of Cassation. The Scotch High Court of Justiciary (there being no appeal from it to the House of Lords) is the most inconsistent in its decisions of any court of last resort in the three kingdoms—three judges one Monday deciding one thing, and another three on another Monday deciding the very opposite. If we are to have a Court of Cassation it would require to be a British Court, set high above the provincial prejudices of Edinburgh, Glasgow, and Dublin, and having no less authority, we think, than that of Her Majesty's Privy Council. It is a melancholy reflection, that the consideration of a famous trial may suggest improvements in the law, but can bring little or no help to the evils of the case itself. The mismanagement and unintentional injustice, the imperfect sifting of facts, which have been too characteristic of the Glasgow trial, can no more be recalled than the words in which Lord Deas expounded to the jury his startling philosophical proposition that "circumstances cannot lie." Whether circumstances can lie or not; or whether they have been made to lie and affirm as a fact what is but at most a suspicion, is the question which Sir

George Grey, in default of a more regular tribunal, is called on to decide, and will decide finally, perhaps, while these sheets are passing through the press. What the issue may be we cannot predict. On the day this ineffectual article is given to the world, the poor woman whose mysterious story has been discussed in it, may be sent by the hands of man into another world. Against the rashness of the verdict we are bound to protest after repeated and most anxious deliberation upon all the facts as yet disclosed, and in that deliberation we have been actuated solely by a love of justice and truth. If she were guilty of murder and guilty beyond a doubt, we say that she ought certainly to suffer death if the last penalty of the law is ever to be exacted at all; but we cannot think that she is guilty beyond a doubt; we cannot say that this mystery is unsolved; and we greatly fear, if no new light is thrown upon it, and the sentence of the law is carried out, that this double tragedy may be remembered for many generations, and remembered most vividly as a blunder in the administration of the law, as a stroke struck by the sword of blind vengeance, and struck in the dark.

ART. VII.—THE PATENT LAW.

IT is probable that within two or three years we shall see a considerable change in the administration of our law of patents, if not in the actual framework of the law itself. For some time past the subject has been discussed in the House of Commons, in the two great Associations which represent the educated opinion of the country on questions of scientific legislation, and in various other public assemblies; and it is notorious that in all these places, and among the many discordant views that have been propounded, a unanimous verdict of dissatisfaction with the present system has been recorded; indeed, we hardly know any one practically ac-

quainted with the working of the patent law, whether lawyer, manufacturer, man of science, or patent agent, who does not admit grave defects in its present condition, and has not his own device for the remedies. Such a state of things demands inquiry, and the more so as we might otherwise fall into the evil of precipitate and mistaken legislation; and the Government have wisely complied with the expression of feeling in the House of Commons, by issuing a Royal Commission to investigate into the subject and report thereon.* It may not be inapposite at the present moment to offer a few remarks on some portions of that wide field of inquiry on which the commissioners are about to enter.

Whatever opinion may be entertained on the abstract question of the right of an inventor to property in an invention, the product of his own brain, the general consent of civilised communities has recognised the policy of such rights, and of the enactment of laws to enforce them. Up to a certain point, indeed, the privilege is of natural law; for of all acquired rights, that of an inventor to his own creation may be most truly called his own; so long as he keeps it to himself he possesses that property which the first occupant by common consent of mankind possesses in the subject of his occupancy; he may enjoy it in secret or he may give it when he chooses to the public.

The analogy of property in inventions and in other things is complete up to this stage, but when the inventor or the author has given his invention or his book to the public, the right to restrain others from copying that invention or book, from applying the elements of matter equally within his direction, as of the inventor to the same or similar objects, is matter of positive law and of municipal regulation. In speaking of the rights of inventors, or of patent right, it is desirable

* The names of the commissioners are as follows:—Lord Stanley; Lord Overstone; Sir William Erle; Sir W. Page Wood; Sir Hugh Cairns, Q.C., M.P.; Horatio Waddington, Esq.; W. R. Grove, Esq., Q.C.; W. M. Hindmarsh, Esq., Q.C.; W. E. Foster, Esq., M.P.; William Fairbairn, Esq., F.R.S.

that the distinction above adverted to should be kept in mind, as disregard of this distinction has led to some confusion on the subject.

For instance, discussions have from time to time arisen on the question whether the grant of a patent for an invention is *debito justitiæ*, or in other words, whether the inventor has a right to demand such grant, or whether it is to be regarded as an act of grace and favour on the part of the Crown to the subject. The latter would appear to be the true view of the case according to the law of the United Kingdom, the power in the Crown in making such grants being limited by the Legislature. It follows from these principles, and is undoubtedly true in theory, that the Crown has a perfect right to refuse any such grant, or to make it on certain or such conditions as it may think fit; and that if those conditions are not complied with, the subject has no just ground of complaint.

The Patent Law Amendment Act, 1854, exhibits this theory in its true light. The applicant for letters patent represents that he has made a certain invention, which to the best of his belief is new and useful, and thereupon he prays for a grant of letters patent for the same. The application is referred to the law officer, as the adviser of the Crown, and the grant is made or not, according to his report; and will be withheld, notwithstanding his report in its favour, should the Lord Chancellor see good reason for refusing to affix the great seal to the grant.

The proceedings above referred to are in the control of the Commissioners of Patents, who have the power of interposing such conditions in the nature of an inquiry by the law officers, or other competent persons, as they may see fit; and it is only fair to the authors of the existing patent law to say, that in their opinion the powers already conferred on the Commissioners by Parliament are sufficient to remedy most of the evils complained of, were those powers exercised with energy and in the right direction. It has been stated by Mr. Thomas Webster, than whom no man is more competent

to pronounce an opinion, that the alterations in the present system recommended by the Committee of the Social Science Association might all have been thus carried out without need of further legislation. This may possibly be too sanguine a view, but it is one worth consideration, and we will therefore proceed to detail what the views of the committee are, and what class of evils they were designed to remedy. We will premise that no body of men could be found whose judgment is likely to carry more weight with the public; it was in reality a joint committee of the British Association for the Advancement of Science, and the Social Science Association; the chairman was Lord Stanley; Mr. Joseph Napier, General Sabine, Mr. Grove, Mr. Webster, Mr. Heywood, and other eminent men, were among its active members; its report was prepared with great care, and was based on resolutions carried after anxious inquiry and discussion. We bear this willing testimony to the worth and labours of the committee, though we are not prepared unreservedly to endorse their recommendations.

These recommendations were shortly as follows:—

That all application for grants of letters patent should be subjected to a preliminary investigation before a special public tribunal, which should have power to decide on the granting of patents, though it should be open to inventors to renew their application notwithstanding previous refusal.

That the tribunal should be formed by a permanent salaried judge, assisted when necessary by the advice of scientific assessors, five in number, to be chosen from a panel nominated by the commissioners, for the adjudication upon facts, when deemed necessary by the judge, or demanded by either of the parties.

That the jurisdiction of the tribunal should extend to the trial of all questions of copyright and registration of design, and be conclusive, subject to the right of appeal to either of the Courts of Exchequer Chamber, with a final appeal to the House of Lords.

That for the preliminary examination the assessors, if the judge require their assistance, should be two in number, named by the commissioners from the existing panel—the decision to rest with the judge. The committee also approved of the principle of compelling patentees to grant licences on terms to be fixed by arbitration, or in case the parties shall not agree to such arbitration, then by the proposed tribunal or by an arbitrator or arbitrators appointed by the tribunal.*

It will be observed that the recommendations of the committee are directed to the remedy of the three following defects in the existing system:—1. The multiplication of patents; 2. The obstructiveness of patents; 3. The litigation of patents. These are no new complaints; they have been repeated on many occasions for the last twenty years, they were the subject of much consideration by the promoters of the Patent Law Amendment Act, 1852, and the remedies were distinctly pointed out, and to a certain extent provided for; but the precautionary and protective measures contemplated and provided for by the Act, have not been carried out, and this omission has aggravated many of the evils that have so long been the subject of complaint. Let us say a few words on each of the alleged grievances.

1. *The Multiplication of Patents.*—The inventor and the public are equally aggrieved by the indiscriminate issue of patents. The loss to inventors from the grant of patents for inventions which are old or worthless amounts to a very large sum in direct money payment alone, without taking into account the cost to the inventor for time, labour, and experiments. The inventor may be, and frequently is, honestly misled; though the means of information are accessible to those who have long accumulated experience on the subject. Inventors, it should be remembered, are taxed to a sum amounting to nearly £100,000 a year. Does not this payment give them some claim to a protection against their being misled in cases in

* The committee was appointed by the Council of the National Association on the 22nd Nov., 1859. For Report, see *Transactions*, 1861, p. 229.

which they are not in a position, or on equal terms, for obtaining information? Some check, in the nature of a preliminary inquiry; some sieve, as it has been termed, through which inventions should be passed, seems to be only just to persons so situated. What should be its nature and extent is too large a subject for us to enter on at the present moment, and we shall content ourselves with observing that it ought to be a very clear case in which the claim of an applicant persisting in the value of his invention should be refused. We may also say that the objection we have heard made to such an inquiry, as derived from the practice in the United States, would be inapplicable to a system in which less was attempted than in that country. If the American system is objectionable and defective because too much is attempted, our own is doubly so; because not only is too little attempted, but that little in many cases is so managed as to be positively prejudicial and pernicious.

2. *The Obstructiveness of Patents.*—These words are on the lips of every opponent of the patent system, or objector to patent rights, but attempt has rarely been made to condescend on any particular amounting to a practical grievance. Stated in the strongest point of view it amounts to no more than this, that persons proceeding on a certain line of investigation and invention find that they have been anticipated in some particular, and require to use an invention the subject of a prior patent, of which they cannot procure the use on reasonable terms.

The remedy for this is obvious. Apply the principle of compulsory sale, the operation of which under the Lands Clauses Act, in cases of land required for public undertakings, is so well understood, to any case in which the use of an invention the subject of an existing patent is required for working out a further improvement, whether it be or not the subject of a patent. A suggestion much to this effect was brought before the Social Science Association by Mr. Macfie at its Meeting at Liverpool, and his paper appears in the *Transac-*

tions of the Association for 1858.* Whatever may be the extent of the grievance, or however small when reduced to its proper proportions, it is fitting that a remedy should be applied for such a possible state of things, and it is for the true interest of the inventor.

It is sometimes urged against any system of patents, that invention by any one person is but the forestalling in point of time of that which some other person would have invented. This may be perfectly true, and a good reason for limiting the duration of the grant, and for compelling such fortunate forestaller to grant a licence to his less fortunate competitor. But what argument does this afford for depriving such forestaller of all benefit from his skill or good luck? Is this the only case in which the first occupant is the admitted legal possessor and owner in perpetuity? What is the foundation of property but first occupancy? Upon what does the right to transmit property depend but upon expediency? Is it not for the public interest that each person should have absolute dominion and control over his own property, both for the present and the future? The distinction which exists between the enjoyment of patent rights and other rights is part of the original contract whereby the State gives to the inventor exclusive privilege for a limited time in consideration of the remuneration which he makes to the public. The patentee has occasionally been represented as a purchaser from the public for a limited time, and if this be a true view of the subject, no objection can be urged even in theory to his being compelled to admit others into a share of that of which he has been a purchaser under such circumstances. The objection not unfrequently urged on the ground of the extent of right and indefinite claim, or of imperfect and inadequate description contained in the specification, is founded on a misconception as to the essential conditions of the validity of a patent, which cannot be supported if the inventor claimed more extension than has been actually made, or if the same be not useful, or not

described in such manner as to enable any person acquainted with the subject to put the invention into practical operation.

The power to obtain a licence under a prior patent would, in the majority of, if not in all cases, compel the parties to an equitable arrangement amongst themselves; and if the objection be well founded, and a case really exists in which a patent is obstructive of further improvement, or presents a serious impediment to trade, the licence during the short period of the duration of the patent would be an effectual remedy. Nor does this remedy require legislative enactment. It is perfectly competent for the Crown to introduce any condition to this effect into the grant of letters patent. Patents as granted under the present system contain a condition very similar to the one now proposed, in favour of articles to be supplied by the patentee for the public service; so that the evil complained of might be effectually met by a modification and extension of the existing proviso.

3. *Litigation on Patents.*—The difficulties in protecting property in patents so as to preserve the rights of the inventor on the one hand, and of the public on the other, are confessedly great. Every one seems to admit that the mode of administering justice in patent cases is imperfect, but opinion is divided as to the remedy. Some advocate a special tribunal, and some a modification of the existing system.

Mr. Grove, whose name both in the legal and scientific world is identified with the subject, advocates the establishment of a separate Patent Court, and our readers will probably remember that he explained his views some time since in an elaborate communication to the *Jurist*. Mr. Grove is for the creation of a tribunal, like the Probate and Divorce Court, presided over by a judge equal in salary and position to those who occupy the benches of the superior courts, and armed with complete and exclusive jurisdiction in all patent cases. The advantages of the plan are manifest; we should have a tribunal specially fitted for the adjudication of questions for which our courts of law are confessedly unsuited; the

judge might be empowered to try either with or without a jury, and either with or without scientific assessors; parties would approach such a court with confidence; skilled witnesses would find there a discerning audience; and last, but not least, the judges and the Bar would be relieved of a class of cases in the ordinary courts, which impede regular business and with which they cannot adequately deal. When to all this we add that such a tribunal might take the responsibility of the primary examination of patents, now confided, rather in the way of a makeshift, to the law officers, and decide on the applications of inventors, whether in open court or in chambers, on some definite and recognisable principles, it must be admitted that the arguments in favour of a separate Court of Patents are numerous and cogent. On the other hand, it has been urged that the evil of different jurisdictions has already attained a magnitude in this country which must stand condemned alike by practical lawyers and scientific jurists; that patent business, considerable as it is, is not sufficient to justify the creation of such a court as is proposed, and that the business under a good system might be expected to decrease; that it would be difficult to find men competent to fill the office of judge; and, what perhaps is more to the purpose than the other objections, that no adequate funds exist to defray the cost, which the House of Commons would not be prepared to cast on the Consolidated Fund. Impressed with the difficulties attending so great a scheme, Mr. Webster has proposed a more modest solution, by recommending that scientific assessors should be provided for the existing courts, who should assist the judges in disposing of patent cases, and enable them to dispense with juries. In support of this plan, or of something similar, it is urged that the real trial of a patent case is in the court of appeal, and consequently that the simpler you make the determination of the issue of fact, the better for all parties. The cases in which a trial by jury as ordinarily constituted can be of service are rare; the whole trouble of preparation and the expenses of

such a trial amount practically, in nine cases out of ten, to no more than serving as the prelude to the settlement of a special case for the consideration of the court, and which may be the subject of appeal to the Exchequer Chamber and the House of Lords. The value of property of this description is in some cases so great, and the distinctions in the application of the law to the facts are so refined, that it would be impossible to deprive either party of the right of appeal to the highest tribunal. If this be so, it is argued, why create an expensive court to do a very simple thing?—if the only function required at the preliminary stage is to eliminate and ascertain the real facts for a higher jurisdiction, what need is there for more than an ordinary trial, perhaps with the assistance of assessors; or at most for a scientific investigation before three persons, as recommended by the Manchester Patent Law Reform Association?

These questions, and others of a like nature, will doubtless receive the careful attention of Her Majesty's Commission, whose Report we shall await with the greatest interest. The principles of Patent legislation have made great progress for many years past; the Act of 1852 was a most salutary measure in the main, though capable of considerable improvement; and it will now be for the Government and the Legislature to take a further step in advance, guided by the experience already acquired, and enlightened by the information obtained by the Commission, and their deliberate judgment thereon. England, of all countries in the world, is most interested in obtaining a sound and beneficial patent law; her manufacturers, her merchants, her men of enterprise and genius, demand this boon from their legislators, and it will be singular indeed if, after all the labour and thought which have been devoted to the subject, the boon should not be obtained.

There is one other point on which we would add a few words. A considerable sum, generally known as "The Inventors' Fund," being the surplus of fees levied on patentees beyond the necessary official expenditure, has accumulated in

the hands of the Patent Commissioners, and the question has arisen, In what way can this sum, and any future surplus, be best employed? Several projects have been advanced for this purpose, of which the following are the most noticeable:—

1. The reward of meritorious inventors by the purchase of their patents.

2. The building of convenient patent offices, with a suitable museum and library.

3. The reduction of fees to such an amount as may be sufficient only for the maintenance of the patent system.

Each of these schemes has its strenuous advocates, and for each, as is universal in such cases, a good deal may be said. We should be inclined to add to the catalogue by hinting that such a fund as this might be legitimately applied to smoothing the way for any advantageous alteration in the law; as by paying part of the expense attending the creation of any new court, or in making compensation to any present recipients of fees, *e. g.*, the law officers, whose duties and emoluments it might be found advisable to terminate.

We can hardly close this somewhat desultory article more profitably than by quoting the opinion of Lord Stanley in reference to this part of the many-sided question we have discussed. In speaking of the surplus fund his Lordship says:—

“The fact that a considerable surplus does exist,—the certainty that it will largely increase, are both admitted. Equally indisputable is it that the taxing of inventions is an expedient never contemplated by the framers of the Act of 1852, and unjustifiable, even in the utmost pressure of financial distress. The latter point requires no argument. Inventors, therefore, demand that this tax should cease, and that patent office fees should be henceforth applicable only for patent office purposes. When once the Treasury ceases to have an interest in the amount of fees collected, the question what those fees should be, and under what limitations it may be expedient to levy them, will present fewer difficulties. The scale of fees as fixed by the Act of 1852, was a com-

promise with the Chancellor of the Exchequer, Sir Charles Wood, in the uncertainty as to the number of patents that would issue; now that experience has shown the amount which those fees may reasonably be expected to yield, the amendment of the legislation which caution dictated, and the appropriation of the surplus to inventors' patents, would be only to carry out the principles of that first instalment of reform in the patent system."

ART. VIII.—FRANCK ON BODMERIA.

De Bodmeria secundum Jus per se, nec non secundum Jus Germanicum, Hanseaticum, Borussicum, Danicum, Norvegicum, Suecicum, Batavicum, Anglicum, Russicum, Gallicum, Italicum, Hispanicum, Lusitanicum, Brasilicum, Romanumque. Scripsit CAROLUS HERMANNUS HENRICUS FRANCK, Doctor Juris Utriusque. Lubecæ: Impensis Librariæ Dittmerianæ. Londini: apud W. Maxwell. Parisiis: apud A. Franck. 1862.

THE origin of the custom of lending money on bottomry is to be ascribed mainly to the prejudice and laws against usury that until recently obtained in almost every age of the world. Bottomry is also connected in principle with the doctrines of general average and salvage, as well as of insurance. If we consider the nature of the transaction itself, however, it will be found to be more nearly akin to partnership than to any other branch of commerce. The laws against usury could be evaded only by means of the lender becoming himself an adventurer. Insurance was unknown at the time of the first rise of this description of contracts. At present, most of the juristical relations of bottomry may be determined by the analogy of insurance law. But it is to the custom of partnerships, and the commercial usages which have in every country sanctioned almost every variety of

such associations, that bottomry, historically considered, is to be mainly ascribed. The origin, indeed, of a usage now universal is comparatively unimportant, except where it becomes necessary to trace out its juristical relations with philosophic accuracy, and a strict regard to its essential nature. The author of the treatise before us first gives an account of the relations of bottomry to the natural or moral law, and then passes on to the exposition which it has received in the various codes of the different leading States of Europe. He has not bridged the passage, so to speak, from his transcendental speculations to the dull realities of authority and case by any sketch of the rise and development of the practice of bottomry. This is the more strange, as in a subsequent part of his work he declares his opinion to be that but one description of bottomry (*bodmeria voluntaria*,) was known to the ancients and that bottomry incurred for the sake of the adventure (*bodmeria necessaria*) has been a development of comparatively modern date. It appears from Valin* that some writers of the French nation had supposed that this contract was unknown to the ancients, and was peculiar to France. That author refutes this opinion, the absurdity of which, however, as also of the statement in the Guidon† to the same effect, is qualified by Emerigon's observation that it was intended to apply only to the form of the contract. Bottomry in some shape must have been coeval with the first spread of maritime commerce, although, like every other invention of social art, it probably has undergone a genetic development.

The author professes to discuss the subject-matter of his treatise both according to the principles of natural justice, and the municipal laws of the leading States—*et secundum Jus per se et secundum Jura civitatum majorum*. The phrase *Jus per se* is novel. This the author admits; but does not seek to justify. He proceeds, however, to explain its signification, and its relations to municipal jurisprudence, especially as

* 2 Valin Com.

† Le Guid. 18, art. 4.

regards the question of the relative authority of natural and positive law. He defines *Jus per se* to consist of those laws which the Deity has directly impressed upon the universe—*istud quod Deus ingenuit rerum universitati, cujus fons Deus est non homines*. If we except physical nature, the ultimate form of expression for which is no doubt a system of laws and forces, there is no law which is not an excogitation of human reason, and, therefore, only mediately derived from the Deity. In closer harmony with the peculiar point of view from which Dr. Franck regards *Jus per se*, would be its definition as consisting of that portion of jurisprudence without which human society could not exist. The phrase, however, is peculiar, and therefore its philosophic explication is not very important. It is, as we have said, used by the author as a synonyme for the natural law. He then proceeds to develope his views regarding *Jus per se*, and bases it, in respect of its physical data, upon the marks of design perceptible throughout all created nature. "*Animadvertimus*," Dr. Franck observes,* "*in omnibus rebus inesse relationes*." This somewhat sententious opening reminds us of Butler's exquisite Analogy, and its postulate: "All things are double one against another, and God has made nothing imperfect." This description of nature, however, by no means illustrates the idea of law, which is essentially connected with causation, or a change of state. The primary notion of law is connected with morality, and denotes a right use of reason, or an exercise of active power in obedience to the moral faculty. The use of the term in respect of physical phenomena is altogether derivative and analogical, and is in fact only allowable in respect of correlative phenomena or uniform sequences of changes. To speak of a law of nature, therefore, with reference to the contemplation of any existing state of things, without regard to the succession of their phenomena in time, is to mix up the notion of active power with that of rest—of order in time with that of order in place. The complete

* Præfatio, p. 1.

expression for an organized whole is, as is correctly observed by Dr. Franck, found in *Universitas*,—a term almost exclusively applied to the leading seats of learning, on account of its exquisite adaptation to express the due organization of a school of mental and moral discipline. Dr. Franck's view of law having proceeded upon an erroneous, or rather peculiar basis, we cannot be surprised that a technical reference to his first conception affects, and somewhat distorts, his subsequent reasoning. Thus he describes action to be a change of relation. But this is merely the effect, and not the type, of active power. He expresses himself with a keener appreciation of the philosophic, as well as of the popular, notion of law, when he states subsequently that a change of certain relations is made according to invariable laws. Law is, in short, a phase of active power, common to certain phenomena. A law of relations, as existing in place, is but an expression for order, for the sublime or the beautiful, and is widely different from the essential signification of the term law itself.

Having stated law to consist in a change of relations, the author proceeds to apply his theory to social intercourse. Each man is the subject of an infinite variety of relations both towards the Deity and towards other men. These relations, moreover, are themselves perpetually undergoing change. One class of these changes, barter, is selected by Dr. Franck as the medium of applying his views. Cases of barter, *permutatio præstationum*, are continually occurring. Here we find Dr. Franck again expressing himself according to his peculiar notion of law as denoting a case, rather than a law, of state, when he says *Justitia in rebus semper fit, in hominibus injustitia cogitari potest*. The totality of being may, indeed, be ultimately expressed as a system of laws; but all such extremely transcendental logic is somewhat out of place in a juristical treatise having any pretensions to be considered practical. The author is too prone, perhaps, to travel out of the ordinary arena of a text-writer. Thus he defines *Prestatio respondens*, or obligation, to be, "*ea quæ supplementum entis*

mutue perficitur secundum Dei voluntatem." This exposition is obviously a mere *petitio principii* awkwardly expressed, if it be anything more than the truism that a natural is a religious obligation. Our author considers *Jus per se* to be perfect; but municipal or civil law—*Jus derivatum*—to be imperfect. This is true only so far as *Jus* is concerned objectively. In its subjective aspect, in its relation to the mind either of the legislator or the jurist, positive law is far more easily comprehended than the natural law; for positive precepts are nothing more than statements of facts, embodying the idea of a human or at least a derived authority prescribing their occurrence. The author, at the close of his exposition of *Jus*, arrives at a conclusion which is perfectly absurd—*Sane id quod fit, quoniam semper cum voluntate Dei fit, semper Jus est si spectamus Deum, sed si spectamus homines singulos summa injuria esse potest.* Here, certainly, is a compendious, but we think an infelicitous, explanation of the origin of Evil. How much better does Butler describe the will of the Deity when he states it to be conditional and not absolute. It is thus incapable of being contradicted, and yet justly annexes rewards and punishments to certain actions. The freedom of the will is another question which has its own proof, viz., experience.

Dr. Franck does not highly approve of the definition of *Jus* in the Institutes as "*ars æqui et boni.*" This is, however, we think, a good definition of *Jus* considered as equivalent to *Jurisprudentia*. It was not, indeed, so meant by Tribonian, who subsequently gives a definition of *Jurisprudentia* itself. *Jus*, however, is most usually, if not always, used to denote the science of morality, or the ethics of law, rather than the application of either natural or positive precepts. Grotius' notion of *Jus* as a dictate of right reason, &c., is as good a point of view as any other whence to contemplate the possible analysis of a single idea, which cannot be resolved into any more ultimate elements. Kant's definition of *Jus* as *circumscriptio libertatis singulorum ut omnes coexistere possint*, exemplifies

an error of a different kind, and in the fundamental conception which it embodies coincides somewhat closely with Dr. Franck's view of law as a state of relations. Prior to the time of Hartley the true theory of moral sentiments was completely obscured by their inapt exposition as forms of the understanding. He and his successors of the same school have conclusively shown that right and duty apply to phases of human conduct that are taken cognizance of by a faculty distinct from reason, though of course inseparably connected with it.

It is not strange that the relations of bottomry to the first principles of jurisprudence, or *Jus per se*, should have attracted the attention of our author. The legitimization of bottomry being an exception to the anti-usury code of the mediæval age, difficult cases of bottomry could not well be determined without a reference to the more recondite principles of law. Indeed, the whole maritime code is mainly based upon the *Jus gentium*, considered according to its definition in the Institutes as consisting of those elements of prescribed duty common to the civil codes of all nations—*quod naturalis ratio inter omnes homines constituit*. It is in this sense that we are to understand the saying of the Emperor Antoninus: *Ego quidem sum dominus terræ; lex autem maris*. The laws of the Hanse Towns have been cited as authorities of more or less weight in our Admiralty Courts; and there can be no doubt that if a point in bottomry new to English law was to be discussed in our Admiralty Courts to-morrow, the Institutes, or even any continental code, provided that it was not professedly based upon local customs, could be referred to for information of value. There is, in short, a common law of the sea, but, unlike the common law of the land, it is to be found in general customs, almost all of which may be readily deduced from the first principles of justice. A statement of the relation of bottomry to *Jus per se*, was, therefore, a very appropriate introduction to a treatise aiming at a philosophic review of the various maritime codes on this subject.

The author when treating of bottomry *secundum Jus per se*,

describes it as comprising, first, contracts of bottomry properly so called ; secondly, as including contracts of *respondentia* ; and thirdly, as another name for any wager on the issue of the adventure. The curious reader will find three forms of bonds of this third sort in the appendix to the treatise of the Dominion of the Sea and Body of Sea Law.* Dr. Franck notices a fourth class of *quasi* bottomry contracts, such, for instance, as a loan for agricultural purposes dependent for its repayment solely upon the proceeds of the crop. This sort of loan was probably not so rare during the period when the laws against usury were in operation as they are at the present day. He also distinguishes between an ordinary loan (*bodmeria voluntaria*) and general and particular average costs (*bodmeria rei pigneratæ causâ necessaria*). There is no essential distinction, however, between these descriptions of loan, all of them being, *ex vi terminorum*, dependent for repayment upon the issue of the adventure. A general average expenditure, as distinguished from a general average sacrifice, is no doubt very different from a bottomry loan. But a reference to such a description of expenditure being completely outside the scope of a treatise on bottomry, the author could not have meant to allude to such.

The author discusses the politico-economic relations of bottomry both in point of justice and utility. He refutes the current opinion that the interest on a bottomry loan can be greater than if the repayment of the principal were insured by a separate contract. We are disposed to think that where the lender is his own insurer, the maritime interest ought to be even less than if a third party intervened. For, although the rate of profit is *cæteris paribus* the same in all branches of commerce, yet, as the lender in bottomry has to exercise a certain scrutiny before granting the loan, this trouble suffices also to let him know for every other purpose the degree and nature of the risk. He can, therefore, insure against the hazard at less cost than a third party not already possessed of the necessary information. The difference, however, as to the

* P. 659, &c.

rate of interest in both cases cannot be considerable. It was owing, perhaps, to a mistaken view of the nature of this difference in the rate of interest as much as to a concern for the interest of the owner that the legal doctrine was established, that the master is not to borrow on bottomry if he can raise the necessary funds by any other means.

Dr. Franck is of opinion that, according to first principles, or, as he prefers to express it, *secundum Jus per se*, the master ought not, before contracting a loan on bottomry, either to consult the crew or any consular or judicial authority. Such a circuitous proceeding appears to our author to be unnecessary, and calculated to weaken the master's authority. We do not by any means coincide with Dr. Franck in this opinion. It appears, indeed, to be supported by the inutility of such a proceeding in the case of a general average sacrifice. When a sudden and unusual peril threatens to destroy both ship and cargo, it is no time, we admit, for the master to hold a general consultation with his crew. But a bottomry loan raised in port is a very different matter, and the opinions of the most experienced of the crew ought, we think, to be taken before it is contracted. Such a course of proceeding could not weaken the authority of the master, for he is not *virtute officii* competent to contract a bottomry loan unless it is indispensable. The consent of the crew would, therefore, be a security both to the master and lender. Under the heading *de debitore bodmeriæ*, the author discusses the question whether the master can, *virtute officii*, contract a loan on bottomry. The owners are, as a general rule, bound by all contracts of the master for which his office affords the presumptive authority, even though, in point of fact, it do not extend to such. Molloy, book ii., chap. 2, sec. 14; *Boucher v. Lawson*, Rep. Temp. Hardwicke, p. 85; Story on Agency, chap. 6, sec. 116. The leading Continental States have adopted the same rule, qualified only by a few limitations. Roccu's Not., 11 to 18 inclusively; Not. 26, 27, 28; Not. 49, 65; Guidon, chap. 18, art. 4, and Cleirac's Com. thereon; French Ordinance, liv. 2, tit. 8; Des Propriétaires de

Navires, art. 2, and the Commentary of Valin thereon; Pothier, Charter Partie, sect. 2, art. 3; Welwood's Sea Laws, tit. 15. The obligation of the owner in respect of the master's contracts in bottomry are governed by the same principles as those that apply to his contracts in general. They are treated of in the civil law under the same head: (Dig. de exercitoria actione). The *onus* of proving that the bottomry loan was *necessary* rests, according to English law, on the lender, *Rocher v. Busher*, 1 Starkie, 27; *Palmer and others v. Gooch*, 2 Starkie, 428. Dr. Franch considers the rule thus so well established in our law to be of universal force, or at least to be binding according to first principles, *secundum Jus per se*.^{*} We do not, however, by any means perceive the soundness of this position. *Omnia presumuntur rite esse acta*. The owners, therefore, ought, we think, to be presumed to have appointed a person who would not improperly hypothecate the property entrusted to him. In a case decided in the Admiralty Court in Scotland in 1807, *Craigie v. Ogilvie and Tygett*, cited in Abbott on Shipping, 8th Ed., 141, the judge recognised a distinction between the furnishing of stores and the loan of money, considering the *onus* of proving the necessity of the loan to rest on the lender only in the latter case. The English rule does not go to this extent, although it requires a less degree of proof in cases where the loan consists of supplies than where it consists of money. The rule in *Craigie v. Ogilvie* might, we think, be very safely admitted. At all events, it is the rule which we should deduce from *Jus per se*. The lender on bottomry is certainly not bound, even according to English law, to see to the application of the money he advances; vide *The Gratitude v. Mazzola*, 3 Robs. Adm. Rep., 272. The American rule on this point appears to be very sound. It raises a presumption in favour of the lender, that he instituted the proper inquiries and was reasonably satisfied of the existence of a necessity for the loan.[†]

In our English code the lender of the money is also bound to ascertain whether the necessary supplies could not have

^{*} P. 12.

[†] Parsons on Maritime Law, p. 419.

been obtained on the personal credit of the owner, without resorting to the bottomry bond. *Heathorn v. Darling*, 1 Moo. C. C., 5; *The Augusta*, 1 Dods. 286, 287. This rule probably sprang, not so much from any jealousy of the law in respect of the master's opportunity of injuring or defrauding the owner by contracting unnecessary bottomry loans, as from its abhorrence of all usurious transactions. Perhaps the supposed inconsiderateness of all seafaring men has also had some influence in establishing the rule. Not only has the lender thus to take into account the necessity of the loan itself, but also of the particular mode of its being contracted. The difficulties of the lender are somewhat diminished by the statute 3 & 4 Vict., c. 65, s. 6, which has conferred upon the Court of Admiralty jurisdiction to determine what are necessities in the case of foreign ships. The case of *The Gospatrick*, 4 Jur. N. S. 742, throws much light upon the scope of this enactment. Dr. Franck is of opinion that the lender on bottomry should, besides establishing the necessity of the loan, also prove the absence of the owner. In other words, Dr. Franck considers* the power to borrow on bottomry is not implied *secundum Jus per se* in the office of master, but may be connected therewith by special circumstances. As the master, however, cannot well be said to enter upon the discharge of his duties until the ship puts to sea, the question cannot often be conceived as arising in practice. If it were not useless to speculate on the relations to first principles of a rule now inflexibly established in our courts, we should feel disposed to contend that, according to *Jus per se*, the master has inherent power to borrow on bottomry. The contrary, indeed, is the rule laid down by all states: Hanseatic Ordinances, art. 58; Hanseatic Ordinances of 1614, tit. 6, art. 1; French Ordinances, liv. 2, tit. 1; Du Capitaine, art. 17, and liv. 3, tit. 5; Des Contrats à la Grosse, art. 8; Emerigon, tom. 2, p. 424; Molloy, book ii., lib. 11, sect. 11; Weskett, 4, tit. Bottomry, sect. 20, 23; *Lister v. Baxter*, 2 Stra., 695. Even in the present days of

* P. 12.

railways and electric telegraphs the question has perhaps lost none of its legal importance.

The saying of Oxenstiern, *quam parvâ sapientiâ regitur mundus*, has in modern times received numerous illustrations from the many advantages that have resulted to commerce from the removal of the restrictions upon private enterprise which an ill-judged system of bureaucratic intervention had imposed. Our allies still groan somewhat heavily under the bureaucratic yoke. They forbid, for instance, an insurance or the contracting of a bottomry loan on the freight only, unless it is actually earned at the time when the contract is entered into. Dr. Franck's remarks* on the impolicy of such a restriction are exceedingly sound and sensible. He correctly states the fundamental principles of insurance to be, first, that the insured is to suffer no detriment or to gain any advantage by any casualty happening to the thing insured. The French law, which prohibits the insurance of contingent freight, *fret à faire*, as distinguished from *fret acquis*, or freight actually earned, clearly violates the first of these principles. The German and English codes, on the other hand, allow the whole freight to be insured, and thus give the insured a slight interest in the failure of the adventure even at the outset, before much expense has been incurred with respect to wages and provisions. With respect to insurance and bottomry transactions regarding the freight, we think a close adhesion to the rule prescribed by Dr. Franck would be more troublesome than it is worth. The English rule, which obtains likewise throughout Germany, Italy, Portugal, and the Hanse Towns, is sufficiently correct for all practical purposes. In cases of general average, as the value of the freight at risk when the general average sacrifice was made can be readily estimated when the adjustment of the general average contribution takes place, the rule advocated by Dr. Franck may no doubt be readily applied. With this view, the General Average Congress at Glasgow in 1860, in their last rule, recommended that any legislation on the subject

* P. 20.

of general average should provide "that in fixing the value of freight the wages and port charges up to the date of the general average act ought not to be deducted, and the wages and port charges after that date ought to be deducted from the gross freight, at the risk of the shipowner." We do not see, in fact, how the rule preferred by Dr. Franck could be applied to freight. For, though the capital to be expended in gaining the freight is only gradually expended, the capital which is to meet the cost of wages and provisions is set apart for this purpose, and may, therefore, for most, if not all practical purposes, be deemed to be at risk.

Furthermore, if Dr. Franck's rule were observed with the rigour which he prescribes, some portion of the freight should at all times continue uninsured, unless it were to be made the subject of daily insurance, and thus the first maxim of insurance law cited by our author be broken.

"Incidit in Syllam qui vult vitare Charybdem."

The observations we have offered on this head respecting the insurance of freight, or contingent profits, apply equally to loans on bottomry on the freight only.

Our author gives* a very able exposition of the essential qualities of the condition in bottomry, viz. the successful termination of the adventure. The creditor, being his own insurer, undertakes all the risk incidental to the adventure. But out of these perils the deterioration in value of the thing hypothecated by means of any *vice propre* is by most writers excepted. Dr. Franck disapproves of the principle of this exception. We think that the common rule is preferable to Dr. Franck's view, which would throw open a wide door to fraud. The consideration of this question, however, is not very important. Every species of adventure must, as a general rule, be successful; for no shipper transmits commodities that are likely to suffer much by any *vice propre* unless the price of the part sold is sufficient to replace the capital expended in its purchase together with the ordinary profits. An acci-

* P. 22.

dental injury is of course nowise different from any other loss in its relations to bottomry, or insurance in general.

The concluding chapter of the First Part of this treatise relates to the proof of bottomry, and contains a statement of the essential requisites of a bottomry contract. It should describe, according to Dr. Franck, the names of the parties, the sum borrowed, the thing hypothecated, the condition of the agreement, the route and name of the ship, the name of the master, the rate of interest, the promise of repayment, the time and place at which the contract was entered into, and the subscription of the borrower's name. But the memorandum need not specify, Dr. Franck thinks, the nature of the adventure. The paramount necessity of expressly stating that the lender undertook the liability of the sea risks, in order to justify the reservation of the maritime interest during the period when the laws against usury were in force in almost every country, having ceased to exist, we think that any memorandum of agreement which would be regarded by a commercial man as a bottomry instrument ought to be held to be such by a Court of Admiralty, vide *Symonds v. Hodgson*, 6 Bing. 114; 3 B. & Ad. 50. In practice sometimes a bond, at other times a bill of sale, is made use of; *Johnson v. Shipper*, 2 Lord Raym., 982. There is, however, no one item the insertion of which we would consider to be more important than a description of the nature of the adventure, nor which would be in greater harmony with the principle of these contracts, viz., that the peculiar perils of maritime adventure constituted a sufficient ground of exception to the laws against usury. A curious point on this head was decided in the case of *Ex parte Halket*, 3. Ves. & Beames, 135, in which a bill of exchange drawn by the master on the owner as security for advances made to the master was not considered as an instrument of hypothecation, although it was accompanied with a verbal stipulation by him that the ship should be liable. If bottomry, however, be originally contemplated, no form of collateral security will affect the

essential nature of the contract; *The Augusta*, 1 Dods. Adm. Rep. 283. Questions upon this head, notwithstanding the repeal of the usury laws, are still important with respect to the jurisdiction of the Court of Admiralty. Dr. Franck's remarks on the proof of bottomry are meagre, and do not touch the question of jurisdiction, probably because in his exposition of *Jus per se* he contemplated merely the abstract relations of bottomry.

Dr. Franck gives *in extenso* the code of bottomry adopted by the delegates of the Germanic Confederation* at Frankfort-on-the-Maine, in 1856. He finds a few blemishes in it, but pronounces it to be, on the whole, the very best maritime or commercial code that has been ever promulgated. He passes a severe criticism on the 684th Article, because it does not specify the essential characteristic of bottomry, viz. the risk incurred by the lender. The context, however, is a sufficient answer, we think, to this objection. We hope that the time is not far distant when, the gates of free trade having been for some time opened by all nations, they will see the expediency of adopting a single maritime code for all. The feasibility of such a desideratum cannot well be doubted, when we see a precedent set by that unwieldy body, the Germanic Confederation.

When treating of the English law of bottomry, our author gives us credit † for having been the originators of "maritime loans combined with hypothecation," by means of which the lender can enforce his claim, notwithstanding the loss of the ship. This, of course, is not bottomry, properly so called; nor could the lender in such a transaction have formerly stipulated for more than the ordinary rate of interest. It is, therefore, only an ordinary contract, and more likely to have been first used by the Rhodians than by ourselves. Our author's commentary on the English bottomry code is, perhaps, the most valuable portion of his treatise. In this department of his labours he criticises, distinguishes, generalizes, reasons in-

* P. 65.

* P. 191.

ductively and deductively, and cites authority and case with as much felicity as if his legal researches extended only to our Admiralty Reports. Only that his statements are given with a closer reference to the abstract propositions of the first part than the collocation of the divisions of his subject warrants, we think his chapters on the English law of bottomry would be found to have no inconsiderable practical value. As they stand, they are not without their value even to the practitioner.

Bottomry is treated of by the later writers on the Roman civil law, under the head of those contracts designated in that system as real, and is found in immediate connexion with the class of contracts called *mutui datio*. With the exception of very few headings such as *culpa*, *dolus*, *negligentia*, &c., there is considerable difficulty in applying most of the rules of the civil law to the complicated transactions of modern commerce. There is, therefore, the less reason to regret that there is no very copious repertory of juristical precepts on bottomry to be extracted, howsoever indirectly, from the civil law itself.

Our author, in his chapters on the Roman code on bottomry, discusses this branch of his subject with his usual discretion and analytical vigour. He seems to think* that voluntary bottomry was the only sort used by the Greeks or Romans. But, if the Greeks had resort to loans not only for a single adventure, but also for outward and homeward voyages combined, which Dr. Franck admits, it is not likely that while their commercial speculations admitted of such complicated transactions, they had not recourse likewise to every expedient for raising money which the necessities of their commerce might require. Of the various terms found in the civil law which may be considered as referring to this class of transactions, Dr. Franck prefers the phrase "*trajectitia pecunia*," though the definition given of "*trajectitia pecunia*" by Modestinus (*Pandectarum*, lib. 10) as "*quæ trans mare vehitur*," strongly conflicts with Dr. Franck's exposition of the phrase. "*Usuræ nauticæ*" is,

* Pp. 341, 348.

we think, a much more appropriate and less ambiguous designation for bottomry than that preferred by Dr. Franck, and appears to us to prove conclusively that loans on bottomry were not unknown to the Romans. He considers that the Roman law has been superseded almost all over the entire continent of Europe by the express promulgation of codes by the various states. It never obtained *proprio vigore* in England, although it has always received from our judges the consideration it deserved. Both on the Continent, and in England, therefore, though for different reasons, the civil law is to be regarded only as such presumptive evidence of the natural law as may be displaced by even merely ratiocinative proof of its injustice or inexpediency. It is, to use a phrase of Dr. Franck's, testimony only of *Jus per se*, and not its authorised exposition. It cannot, indeed, be expected to throw much light upon questions of bottomry, since so learned an authority as Dr. Franck appears to have some doubt whether cases essentially resembling modern contracts of bottomry ever occurred during the sway of Rome, and, at all events, denies that any description of bottomry, except of the voluntary sort, was in vogue in ancient times. Bottomry, *rei pignoratæ causâ necessaria*, being, according to Dr. Franck, unknown in ancient times, few cases of any kind of bottomry used then to occur, and hence, from the resort to voluntary bottomry only, he accounts for the rule of the Roman law that the master could not raise money on bottomry without express authority to that effect. A less technical and unsubstantial reason for this rule is, we think, to be found in the comparatively narrow limits of the commerce of ancient times, and the consequent difficulty of the master's obtaining the necessary supplies except in those places where the owner of the ship had a commercial connexion.

This treatise reflects the very highest credit upon its learned author, and shows him to be possessed of a mind capable of applying the most profound principles of jurisprudence to the infinitely varied details of commerce. His exposition of *Jus per se* is logical, elevated, and masterly. His account

of the Roman law of bottomry, or rather of those portions of the civil law that implicitly relate to a class of contracts under which those of bottomry may be not improperly ranged, is elegant and succinct. His commentaries on this branch of the civil law ought, we think, to have immediately succeeded his disquisition on *Jus per se*, and so have formed a convenient medium for applying the abstract principles of the first portion of the treatise to the different codes of leading maritime states of Europe. This defect of arrangement, however, is the less important, as the civil law is very barren of any general rules admitting of a practical application to contracts on bottomry of the present day. The arrangement of the matter of this treatise is in another respect also, perhaps, somewhat faulty. It is, we think, to be regretted that the author did not first give a statement of the fundamental principles of jurisprudence applicable to the various divisions of his subject, and then show in immediate connexion with each heading in what respects the different states of Europe observed, or deviated from, the precepts of *Jus per se*. It is with reluctance, however, that we notice imperfections in a work, which, on account of the scholarship, profound comprehension, and philosophic analyses exhibited by the author in every page, deserves our warmest commendation. This treatise is mainly written in Latin, the style of which constitutes no small portion of the general merit of the author.

ART. IX.—THE COLLEGE, DOCTORS' COMMONS.

ON a former occasion we called our readers' attention to the many distinguished civilians who had adorned the old College of Doctors' Commons.* In doing so we mentioned, in passing, that the latter would ere long lose its name and application under the blow of the auctioneer's hammer. The

* Vol. xi. N. S. p. 265.

sale of the college will be an accomplished fact in the course of the current month.

If this were merely the sale of a good property in the City, by a London corporation, we should not have adverted to it more than to any other alienation which occurs in the changes and chances of human affairs, when estates, after having excited admiration by their compactness and integrity, finally undergo the fatal process of disintegration.

Laudas, insane, trilibrem

Mullum, in singula quem minus pulmenta necesse est.

But the circumstances connected with the College of the Doctors having been so peculiar as to have induced the Legislature to convert a trust estate into a beneficial interest, we think that the story, as well of its acquisition as of its conversion, deserves commemoration in these pages. We will, therefore, show how the estate came to the Doctors, and how they acquired their present right to sell it for their own private advantage.

The facts stand thus: in 1567, Dr. Hervey, Master of Trinity Hall, Cambridge, and one of the Advocates of Doctors' Commons, purchased of the Dean and Chapter of St. Paul's, London, the lease of a ruinous building then standing on the site of the present college, and called Mountjoy House. He made a present of it to the Judges and Advocates of the Commons, and they afterwards repaired the old mansion so as to make it habitable for themselves and their wives. The Doctors thenceforth took up their abode in Mountjoy House and in the buildings which succeeded it after the Fire of London.

The lease was made to the Master and Fellows of Trinity Hall, in trust for the Doctors, for a term of ninety-nine years, to commence at the expiration of an existing lease which Dr. Hervey had also bought up. On this occasion the Dean and Chapter further covenanted that if the Master and Fellows of Trinity Hall should at any time during the before-mentioned term of ninety-nine years offer to surrender the lease, the Dean

and Chapter should, upon a fine of £20, grant them a new one for the same number of years.

Old Mountjoy House was burnt down in the Great Fire, and the Doctors were without an abiding place of their own. In 1670 they obtained a new lease of the property from the Dean and Chapter for sixty years, and shortly afterwards set to work to rebuild the College in its existing form.

The new lease was to expire in 1730, but previously to its expiration the Doctors applied to the Dean and Chapter to renew upon surrender agreeably to the terms of the covenant made in 1567. This the Dean and Chapter declined to do, being fortified in their refusal by the 14 Eliz., c. 11, which disabled Dean and Chapters, with other ecclesiastical corporations, from granting leases of houses in any city or town corporate for a longer term than forty years. After some squabbling both in Chancery and in the House of Lords, the latter judicature decreed that the Dean and Chapter should grant a new lease on the same trust as that upon which the old lease had been made, but for the term of forty years only.

This further lease was accordingly made. It expired in 1770, and the old litigation recommenced, by the Doctors filing a bill in Chancery praying that the Dean and Chapter might be compelled to grant a new lease on the same terms as that which had been directed by the Court in 1728. In 1767 the Lord Chancellor dismissed the Doctors' bill, and by his decree deprived them of all beneficial interest in the estate.

When the Doctors found themselves baffled in obtaining a lease upon easy terms, they made up their minds to effect a fair bargain with the Dean and Chapter; and with a view to enable themselves to treat with the latter without the intervention of trustees, they procured, in 1768, a royal charter of incorporation.

On the expiration of their old lease in 1770, they purchased a new one of the Dean and Chapter for a term of forty years,

and also obtained from the lessors an agreement by which the latter engaged to convey to them the freehold and feesimple of the estate for ever, in case such agreement should be confirmed and carried into effect by Parliament. The agreement was afterwards confirmed and carried into effect by a private Act, (the 23 Geo. III., c. 30). In the preamble of this Act it is stated that the object of the Fellows of the College was to procure and secure to themselves a fixed abode, and that the Act was passed for effecting that purpose. Time rolled on, and in 1857 the Doctors came to the conclusion that *quâ* such they required no fixed abode, and by 20 & 21 Vict., c. 77, they obtained power to sell the estate for their own private use and benefit. Whether the Doctors were influenced in taking this step by the recorded reasoning of Sir Boyle Roche, we cannot say, but they have as clearly by their actions ignored the claims of posterity as that gentleman is said to have done by his words.

There is much however that is grave and consequential in the act of the Legislature which has sanctioned the sale of the college. Though this is an age ripe and apt for the introduction of law which would have startled our forefathers, this, perhaps, is the most striking instance which has yet appeared of the prevalent laxity of legislation; and it is noticeable that it should have been enacted for the especial behoof of Doctors' Commons, so long the stronghold of conservatism.

In the enactment, however, there must be a principle, if we can but find it. It would, upon investigation, seem to be no other than this,—that a corporation may, if it so please the Legislature, be converted from life-tenants or trustees into beneficial freeholders, and no consideration that the public might have derived a benefit from the continuance of the trust should be allowed to militate against the conversion, unless of course the public, in the name of the poor, or other claims equally strong, have a definable and distinct interest in the application of the revenues of the property in question.

This principle, bold and subversive of timid restraints as it

is, is intelligible, and may possibly be applicable to other and analogous cases, as a protest against useless and unnecessary mortmain.

We will not venture to define what may be all the analogous cases, but we cannot forbear to point out a certain class of them which we think are of such a nature.

We all know that some of the corporate companies of the city of London possess large and princely (ere long to become larger and more princely) estates in the North of Ireland. These magnificent properties they hold upon no particular trust, except to apply their revenues to the use and behoof of the members of these companies.

Here, we think, the example of Doctors' Commons might be beneficially followed. A participation of these estates amongst the members of the companies would, by bringing back a landed gentry to a soil from which it has been eliminated, operate more effectively to consolidate and improve the tenantry, than all the best endeavours which philosophy may dictate without the presence of resident landlords.

The beneficial influence of a housekeeping landed gentry is so mighty, that we scarcely fear to assert that a pack of hounds with a resident landlord will do more social good to a district than the best managed school, where there is no person of that grade and influence.

ART. X.—THE METROPOLITAN AND PROVINCIAL LAW ASSOCIATION AT BIRMINGHAM.

THE Metropolitan and Provincial Law Association is a Society of Attorneys and Solicitors, established in the year 1847, "for the purpose of promoting the interests of suitors, and the better and more economical administration of the law, of obtaining the removal of the many and serious grievances

to solicitors, and through them, to the suitors, and of maintaining the rights and increasing the usefulness of the profession."

Its history is, we believe, correctly stated in an article in *THE LAW MAGAZINE* for 1848, (N.S. Vol. VIII.,) and it will be sufficient, here, to say that its establishment was the result of a conviction among many eminent members of that branch of the profession in town and country, that much crude and unwise legislation, hurtful alike to the profession and the public, would have been avoided, if the experience and rights of the profession had been regarded and maintained. They felt that as attorneys and solicitors were necessary agents in carrying into effect all improvements in the law, it was an injury, not only to them, but to the public, to neglect their assistance or lower their status; and they resolved to organize in self-defence. They deemed it necessary that this organization should be distinct from the Incorporated Law Society, which, it is well known, has an official control by charter over the whole body of attorneys and solicitors. The constitution and purposes of that society unfit it for the popular and prompt action which is the necessity of a defensive organization. That there is no rivalry between the two societies is clearly evidenced by the fact, that several members of the Council of the Incorporated Law Society are among the most active on the committee of management of the other society, and that on almost all the important questions which have concerned the profession, the two societies have worked harmoniously together.

The difference between the action of the two societies is, perhaps, best illustrated by such a meeting as that which has just taken place in Birmingham. Since the year 1854, in addition to the ordinary business of the association, which is necessarily done in London, its members have held meetings in the principal towns and cities. At these meetings papers are read and discussions held on subjects affecting the interests of the profession. In this way the association has in turn visited Leeds, Birmingham, (twice,) Liverpool, Manchester, Bristol,

Newcastle-on-Tyne, and Worcester. Its second visit to Birmingham took place on the 7th and 8th of October; and, to show how attorneys and solicitors think and speak on professional topics, we present a very condensed account of the proceedings. The Chairman of the Association, Mr. T. Avison of Liverpool, first delivered his annual address, and after some congratulatory remarks said:—

“It appears to me that this forms a most fit occasion for putting the question to ourselves—Have these aggregate autumnal meetings of the association succeeded? I think, gentlemen, that there can hardly be but one reply to this question. I have been present at nearly all of our meetings, and I feel that whether we consider them as means of making us better acquainted with each other, or whether we judge of their success by the merits of the various valuable papers which have been read to us, we must pronounce them a success. It appears to me that one of the great evils to which our profession is liable is this, that we are too much isolated from each other, and that we act too independently. I believe that these are the great causes of our weakness as a body, and that we must seek in collective and co-operative action the means of raising us as a profession, and giving us that power which we ought to possess. Gentlemen, if we compare the position of this association at the present time with what it was when we met here in the year 1855, we shall find that we have gained much additional power and much respect. Our association is now consulted by the highest legal authorities, and the suggestions of our committee and members are invariably considered with the greatest attention and respect. I hope that I shall be able to satisfy you all upon this point before I close my present very imperfect observations. It now becomes my duty, as chairman of the association, to give you a short account of the endeavours made, and the results obtained by your committee of management, since the metropolitan annual meeting, held on the 16th of April last, up to which time you have all received similar information

concerning the operations of the present year from the last annual report printed and circulated among you, and with the contents of which I will presume you to be acquainted."

He then proceeded to narrate the proceedings of the committee in reference to the proposed law reforms of the last Session: The Land Transfer Act, the Law of Property Amendment Bill, the Joint Stock Companies' Act, Law of Partnership Amendment Bill, and many other measures. As an example of the good sense and activity of the committee, we select two paragraphs.

"JUDGMENTS, &C., LAW AMENDMENT.

"The Bill to amend the Law relating to Judgments, Executions, Statutes, Recognizances, and *Lites Pendentes*, introduced by Mr. Hadfield, proposed to abolish the charge on land of registered judgments. Now, however desirable it might be to alter this law as applicable to future cases, it appeared to your committee that it would be a change in the law which would very prejudicially have affected the rights of creditors by depriving them of the protection as to then existing judgments expressly reserved to them at the instance of the managing committee, by Lord St. Leonards' Act of 1860. Notice of opposing the second reading of the Bill was at once given by the Attorney-General, but out of deference to Mr. Hadfield the managing committee were unwilling to take active steps against it unless absolutely compelled to do so. They, therefore, wrote to Mr. Hadfield, urging their reasons and requesting him to withdraw the Bill. This, however, he declined to do; and the managing committee having received an intimation that the Attorney-General needed help in his opposition, they considered it their duty to prepare a full statement of their arguments against the proposed confiscation of existing securities, and embodied them in a petition against the Bill. This was presented on their behalf by the Attorney-General. After Sir William Atherton had delivered his speech, Mr.

Hadfield said he would not trouble the House to divide, and withdrew the measure.

“In order to show the vast amount of property that would have been affected (an amount almost incredible) had Mr. Hadfield’s Bill become the law, I would refer to a return which in May last was presented by order of the House of Commons: It appears from that return that ‘in less than two years, namely, July, 1860, to May, 1862, 3,668 judgments have been registered (or re-registered to keep them alive) in the registry of judgments, for the purpose of their being a charge upon landed property, and this is in addition to judgments on which satisfaction has been entered.’ The report also states that ‘there were within the five years preceding the 31st May, 1862, unsatisfied judgments amounting to £16,500,000.’

“BANKRUPTCY TRUST DEEDS.

“Another gratifying result of the endeavours of your committee is the general order of the Court of Bankruptcy of the 22nd May, 1862, directing that an attested copy of every trust deed registered after the 5th June last, under section 192 of the late Act, should, with a schedule of the creditors, be filed by the Registrar, as recommended in the last annual report of the association, and in a letter written to the Solicitor-General by the committee.”

Other topics referred to in the address were the questions of legal and medical coroners, and preliminary education, as to which Mr. Shaen made the following remarks:—

“The argument in favour of the appointment of a medical man to the office of coroner would equally apply to the appointment of a medical man as judge in a charge of murder by poison, as a coroner’s duties were purely judicial, the medical information necessary being supplied him in the evidence to which he had to apply the law in his summing up to the jury.” Adverting to the first three local preliminary examinations that had taken place under the new system, he said that “at that in February there were 23 candidates from London, Liverpool,

and Cardiff, of whom 19 passed; that at that in May there were 113 candidates from London, Birmingham, Bristol, Exeter, Leeds, Liverpool, and Newcastle-on-Tyne, of whom 77 passed; that at that in August there were 96 candidates from London, Birmingham, Bristol, Leeds, Manchester, Newcastle-on-Tyne, and Plymouth, of whom 74 passed. The percentage of those rejected was therefore 36·72, which, compared with other examinations, was, he considered, fair evidence that the examinations were a good test of the candidates' abilities. As to the immediate examinations, four graduates presented themselves at the Easter Term and passed, and at the Trinity Term four graduates and eight ten-year clerks presented themselves, and eleven of the twelve passed."

The first paper read was "On the Relations between the Profession, their Clients, and the Public," by Mr. G. J. Johnson, of Birmingham, a solicitor, who holds the appointment of Professor of Law at Queen's College in that town. The following extracts will show the style and character of this paper. After premising that its object was to point out a few of the mistakes constantly made about the profession by their clients and the public, the writer continued:—

"The first misconception, and root of all others, is the belief of the public *that law is for the most part a wilful complication by lawyers, for their own benefit, of what ought to be a few simple rules.* It is true that this fallacy is not often put into words, for it is just one of those absurdities which are refuted by putting them into plain English. It is as correct to say that hunger and thirst are the inventions of bakers and brewers, and kept up by them for their selfish ends. Nevertheless, some such belief is the unconscious sentiment of the great mass of our clients and the public. They verily believe that, but for us, the enormous legend of English law could be cut down into a little pocket volume, which everybody might buy at the railway stations for a shilling, and thereby become his own lawyer without having a fool for his client. Even so able and acute a writer as the author of "The History

of Civilization," adopted the same fallacy to the extent of arguing at great length that all our present and future legislation was, and must be destructive, and that the statutes would by and by be reduced to a minimum. I admit the constant destruction which goes on every session, but I see no prospect on that account only that English law will at present become more simple, because I notice that whilst we are repealing on one hand, we are adding statutes and cases to an enormous extent upon subjects unknown to the books fifty years ago.

"The reason of this is, that the law of any nation is simply the ultimate expression of its average morality; the hardening of that morality into institutions. English law is complex because English life is complex, and for the present there does not appear much probability of its getting simplified."

Illustrating this in detail, the writer then proceeded to the practical conclusion that the most rapid and extensive law reforms would not enable the lay public to dispense with professional assistance of some kind or other. Of course they might abolish attorneys and solicitors, but if they could not all be their own lawyers, they would simply fall into the hands of some of the species of the genus "agent," of whose malpractices the writer gave some striking instances. He continued:—

"Now let us straightforwardly say to our clients and the public, 'if you could get rid of us we should not blame you for doing so, but if your attempts to do so are not only futile, but costly, had you not better as sensible men keep us in the two objects which will be most beneficial to both of us, viz., improve our status, and remunerate us fairly?'"

On the improvement of status an account was given of the exertions of the association, now happily crowned with success, to establish an examination in general knowledge previous to articles; an object which the association has steadily pursued since its establishment, and which is destined to have a great influence on the well-being of the profession.

The next two papers were taken together, both having

reference to a subject of great interest to country solicitors,—the recent legislation as to transfer of land. The first was by Mr. W. S. Cookson, of Lincoln's Inn, and was confined to an examination of the "Act to facilitate the proof of title to, and the conveyance of real estates" (25 & 26 Vict., c. 53), in order, to use the writer's words, to ascertain "what it means, how the machine is to be worked, whether defects in it do really exist which, as apprehended by *The Times*, will require its amendment in many important particulars, and what its effects will be on our clients, their lands and their purses." After an analysis of the Act, the writer proceeded to point out numerous defects in its wording, arising from a disregard of the canon of legal composition, that the same word shall always be used where the same thing is meant; *e.g.*, "estate" is sometimes used in its legal sense, and sometimes in its popular sense, where, according to the interpretation clause, the framer of the Act meant "land." Registry is constantly used for "register," and register is constantly applied without explanation to the register of "estates," meaning "land," the register of title, and the register of incumbrances. He then continued:—

"The scheme of registration proposed by the Act appears to be open to several serious objections.

"The *first* objection arises from the difficulties and responsibilities which must often attend the preparation for the record of title, of an exact record in concise terms of the existing estates, powers, and interests in the land (s. 14). Nothing perhaps is more difficult to a lawyer than to express concisely, and with absolute accuracy, the whole effect of a written instrument. One of our most eminent conveyancers was recently asked which of the two he would prefer drawing for the same fee, the deed, or the concise summary of it for the record of title; and he unhesitatingly said the 'deed.'

"The *second* objection is the necessity involved, in indefeasibility of title, of finally determining in all cases, except those of disputed boundaries, which may be left undecided (s. 16),

the identity of the land with the description given of it in the deeds. This objection is forcibly stated in the petition of the Incorporated Law Society to the House of Commons, and need not be repeated. Every practising solicitor knows that in a great majority of cases the evidence of identity establishes nothing more than a reasonable probability.

"The *third* objection is, that the 'record of title' will inevitably become, under another name, a registration of assurances."

The latter point was supported by a minute examination (which we regret our space does not enable us to set out at length) of several clauses of the Act.

The second paper, by Mr. John Turner of London, comprised an analysis, not only of the 25th & 26th Vict., c. 53, but also of the Declaration of Title Act, 1862 (c. 67). Of the principle of the latter Act, Mr. Turner fully approved, and thought it might be usefully adopted in many cases, and he also considered that "great credit is due to Government for overlooking political claimants in the appointment of Registrar under the recent Act, and for selecting the best man for the office, without regard to political interests. I think that this departure from a vicious system should be marked by the profession by a loyal determination to give the Act every possible support, and by furnishing suggestions for amendment where necessary."

A very interesting discussion followed, in which Mr. Hope Shaw and Mr. Eddison, (both of Leeds,) Mr. Livett, (of Bristol,) Mr. Eden, (of Liverpool,) Messrs. T. Kennedy, Payne, and Shaen, (of London,) and others, took part. The principal difference of opinion was as to the tendency of the Act to produce a registration of assurances. The Yorkshire solicitors being in favour of such a system, finding that their own local register had worked well, and the London solicitors just as strongly condemning it, because their experience of the Middlesex registry was not favourable. The meeting were unanimous in their desire to adopt any sound and well-digested

measure which should save their clients the costs of repeated examination and re-examination of title. The rules and scale of fees had not then been issued, but it was generally feared that the cost of giving notices to adjoining owners would prevent the adoption of the former Act, except in cases where large estates were intended to be cut up for sale in small lots, and in which case an indefeasible title and a short conveyance would add greatly to the chances of sale.

The next subject brought before the association was the Partnership Law Amendment Bill of 1861, on which Mr. Arthur Ryland of Birmingham read a valuable paper. As the bill is to be re-introduced next session we extract the following account of it.

“A bill for the amendment of the law of partnership was brought into the House of Commons and read a second time last session, and it is intended that early in next session it shall be re-introduced and referred to a select committee.

“The subject is one peculiarly fitted, as it appears to me, for the consideration of our society; and I therefore propose to lay before you an outline of the bill, and some of the reasons which lead me to regard it as an important commercial law reform, deserving of your attention, and I hope of your support.

“The growth or private history of bills I have often found useful in the consideration of their merits. I will therefore tell you at the outset the origin of this bill. It was prepared by Mr. Alfred Wills, upon the instructions of the Birmingham Chamber of Commerce, and with the sanction of other Chambers. These bodies you will, I think, admit, are entitled to speak with some authority on partnership law, but their opinions and schemes may with advantage be reviewed by a society of lawyers. I should regard the imprimatur of the Chambers of Commerce and of this association of law societies as the best recommendation which a bill relating to matters commercial could have; our statutes on such subjects would

be much improved if, in their preparation, they were subjected to their united criticism.

“The objects of the bill are twofold, (1) the extension of the principle of *limited liability to sleeping or loan partners in trading concerns*—and (2) the registration of persons constituting trading firms.

“The provisions of the bill as to *limited liability* are as follow :—

“The bill declares (s. 3) that it shall be lawful for persons to lend money to a trading concern upon the terms of receiving a share of the profits either instead of, or in addition to, a fixed rate of interest, without becoming thereby general partners. The term *general partner* is used to describe what we now understand by a partner, and in contradistinction to a *limited partner*, which words are used to describe a lender of money within the provisions of the Act.

“In order to entitle a person to enjoy this limited liability, it is required (s. 4) that he should register with the Registrar of Joint Stock Companies certain particulars, and comply with certain specified conditions—if any of these be neglected he becomes a general partner (s. 8).

“These particulars and conditions are as follow :—

“1. The names and residences of each partner, and whether a general or special partner.

“2. The nature and place of business.

“3. The firm.

“4. The sum lent by each limited partner—the time of advance and when repayable.

“Loans are to be registered within fifteen days, and are to be actually paid at the time named in registry or within fifteen days afterwards, and no part of the money lent shall be repaid, satisfied, or secured in any manner before the time stated in the registry.

“The firm is not to include the name of any limited partner ; if it do, then such partner becomes a general partner.

“ Then follow provisions relative to the dissolution of firms having limited partners.

“ The bill declares (s. 10) that such partnerships shall be dissolved as to the limited partner on the expiration of the period for which the loan was granted, or by the death or bankruptcy of one of the general partners, and (s. 11) on such dissolution the loan becomes an ordinary debt. It may be renewed and then fresh registration must be made. It is required (s. 12) that upon dissolution by the death of a general partner an entry shall be made upon the registry.

“ It is provided (s. 13) that the general partners only shall be liable to be made bankrupt in reference to the dealings of the firm: but that on such bankruptcy, the limited partner shall not be entitled to receive any sum remaining unpaid, nor any interest or profits due to him as a limited partner, until all the creditors of the bankrupt whose debts were contracted during the limited partnership are satisfied; and if a general partner shall be bankrupt within twelve months after the dissolution of a limited partnership, in other words, within twelve months after a loan has been repaid, the limited partner shall contribute, to the extent of the money he has withdrawn from the concern, in order to make up the deficiency of the bankrupt's estate in the payment of those creditors whose debts were contracted during the limited partnership.

“ The provisions of the bill as to registration are founded upon the preamble, that it is expedient that the real constitution of trading firms should be known.

“ It requires (s. 15) that every person who carries on trade either alone or with others under a firm which does not contain the surnames and Christian names of all the persons carrying on such trade—or which firm contains the name of any other person not in the firm—or the words ‘ & Company,’ shall send to the registrar a statement in writing of the names and places of residence of the persons constituting the firm. This statement is to be signed by each person therein named who is resident in Great Britain, the signatures to be attested

by a justice of the peace, banker, or attorney. Changes in the constitution of each firm are to be notified to the registrar (ss. 16, 18).

“Persons so registered may sue or be sued in the name of the registered firm, and service of process at the registered place of business shall be deemed good service on the person or persons constituting the firm.

“If any person omit to make required registration, such non-registration may be pleaded in bar to any action brought by him in respect to any contract made by the firm (s. 20).

“Such is the outline of the bill. We will first deal with that part of it which relates to *limited liability*. You will observe that it does not propose to limit the liability of any partner whose name appears in the firm as a partner; every such partner will continue liable to the full extent of his property, and this is obviously just. The only parties whose liability we seek to limit are those who in fact have never been trusted. If *all* the partners in a trading concern desire limited liability they must conform to the provisions of the Joint Stock Companies Act. We deal only with those partners who are associated with others in whose names the concern is conducted, and who are liable without limit. I am anxious to be clear on this point, as it is more convenient in referring to the principle I contend for, which I shall have frequently to mention briefly as ‘limited liability,’ instead of using the lengthy phrase of ‘the limited liability of sleeping partners.’

“And I wish to be understood, whilst condemning the principle of the unlimited liability of sleeping partners, as heartily approving of maintaining the obligations of all persons who have allowed their names to be used as an inducement to credit; in other words, of checking false pretences in contracts.

“Our bill is founded on the assumption that persons trusting a private trading concern contract with those parties whose names are in the firm, or who actively conduct its business as partners; and in order to check any false pretence from borrowed capital, which under the present system of loans at large

fixed rates of interest is not infrequent, we provide a registry of the particulars of loans, and impose conditions to prevent sham loans. So that if our bill becomes law, the dealings with firms having limited partners will be contracts entered into with the knowledge that such limited partners are not to be responsible beyond their subscribed capital, contracts precisely analogous to the contracts with insurance companies. We all well know that every policy of insurance, whether against loss from fire, or from loss at sea, or for sums payable at death, contains a clause declaring that the stock of the company shall alone be responsible for all claims in the policy, and that no proprietor of the insurance company shall be liable beyond his share in such stock. If every contract of a trading concern was reduced into writing, then an Act of Parliament would not be necessary. Each house would make its own law, and that without the most fastidious moralist raising any imputation of dishonesty or unfairness."

Mr. Ryland then proceeded to trace our present principle of the unlimited liability of dormant partners from the case of *Waugh v. Carver*, in 1793, (which case, as observed by Mr. Commissioner Fane, "was not law but mistaken political economy,") down to the present time, and cited against it the opinions of a numerous array of jurists, judges, political economists, and statesmen, in addition to the Report of a Select Committee of the House of Commons in 1851, and the resolution of the House itself in 1854, and concluded that part of the paper with the following summary of the arguments in favour of the principle of limited liability.

"The received principle of commercial legislation is to leave people to act for themselves, and not to restrict competition.

"Private interest is a better guarantee for caution than public superintendence.

"The interest of a community is best consulted by leaving to its members, as far as possible, the unrestrained and unfettered exercise of their own talents and interest.

"Capital without industry is dead, and so is industry without capital. It is the union of the two out of which all wealth arises. It is therefore most impolitic to discourage that union by saying to each accumulator, you shall not risk any portion of your accumulations for the aid of struggling industry or struggling ingenuity, on the terms of sharing the profits, if profits there be, without risking every farthing you have in the world.

"The principle of limited liability offers encouragement to talent and energy, which, in the absence of such a system, may find less means for their exercise and development. The introduction of the principle would tend not only to the pecuniary benefit of capitalists, but they would combine with it the advancement in life of some relative or friend in whom they have confidence. It would retain at home capital which is now sent abroad, and although this might lessen the value of money, it would increase the value of labour, and thus the public good be promoted."

As to the registration of firms, Mr. Ryland gave instances where creditors had been set at defiance for the want of some means of discovering the actual members of a firm, and cited the second Report of the Mercantile Commission in favour of the proposed scheme of registration. In a very interesting discussion which followed, the desirability of the registration of firms was taken as too obvious to need argument. It was also generally admitted that the principle on which dormant partners were held liable, viz., that they took a part of the fund on which the creditors relied for payment, was one-sided; because if there were no profits then every servant and creditor who was paid took a part of the fund, and ought, if the principle were carried out, to be made liable also. Some objections of detail were taken to the bill, particularly as to the clause that the limited partner should refund in case of bankruptcy within twelve months. It was contended that it would be better not to impose any limit of time, which is easily evaded, but to make the liability to refund dependent on the

solvency or insolvency of the business on the retirement of the limited partner.

Closely connected with the subject of allowing persons to take a share of profits in lieu of an exorbitant interest on preferential securities, was a paper read by Mr. C. T. Saunders, (of Birmingham,) on "The Frauds of which Bills of Sale are the instruments, and the remedy for their prevention." After an historical review of the statutes and cases relating to transfers of chattels personal, the writer argued that the true and safe doctrine was that implied in Tyne's case, (3 Co. 80,) and expressly laid down by Lord Hardwicke in *Ryall v. Rolle*, (1 Atkyns, 165,) that all such transfers should be held fraudulent *unless accompanied by actual change of possession*. The contrary doctrine, that if the continuance of the debtor's possession was consistent with the forms of the deed it was not fraudulent, has been settled ever since *Martindale and Booth*, 3 B. and Ad. 505, (A.D. 1834,) and the increasing mischiefs arising from bills of sale led, in 1854, to the Act for their registration (17 & 18 Vict.)

The present state of the law the writer, as to conditional bills of sale, stated to be as follows:—

"1st. As between the assignee under a bill of sale and the other creditors of the debtor: the bill of sale may be made for an entirely antecedent debt, and for the express purpose of stopping a hostile execution. The mortgagor may retain possession of the effects, and a creditor who seeks to levy an execution upon the goods is compelled to withdraw.

"2nd. As between the assignee under a bill of sale and the assignees in bankruptcy of the debtor: a bill of sale may be given on the eve of bankruptcy, may comprise the whole of the bankrupt's effects, may secure an old-standing debt *accompanied with a present advance*, and if possession be taken the day before the bankruptcy takes place, the assignment will be valid in the absence of proved fraud, and the other creditors will lose their dividends. Of course in each case the deed must be registered unless possession be taken within

twenty-one days after the execution, when registration becomes unnecessary.

The various dishonest uses made of such a state of the law were then described, and the writer contended that the Act of 1854 had rather fostered and increased those mischiefs than otherwise. Bills of sale were more frequent than ever.*

The only remedy, he argued, was to be found in a return to the old doctrine laid down by Lord Hardwicke, from whose judgment in *Ryall v. Rolfe* he cited the following passages:—

“It has been said in this cause that great mischief might arise to trade and credit from making securities of this kind void, because it might prevent persons from using their credit in trade, and that they will not be able to make a security without exposing their circumstances to the world, which may hurt their credit. On the other side it has been argued, that *a delusive credit is of still more dangerous consequence*. I will not say but that some inconvenience may arise on each part, but I will say that very great inconveniences may arise by giving an opportunity to people to make such securities, and yet appear to the world as if they had the ownership of all these goods of which they are in possession, when perhaps they have not one shilling of the property in them; and further I will venture to say that it was the design of the Act of Parliament (13 Eliz.) to prevent this, for the Act was made in the simplicity of former times, long before those large and airy notions of credit prevailed which have since been introduced.”

Owing to the lateness of the hour at which this paper was received, it had not the advantage of being discussed by the meeting, but the general impression was that the writer had not overstated the frauds on creditors of which bills of sale were the instruments.

Mr. Henry Reynolds (of Birmingham) read a short paper upon “Probate Duty on Leaseholds in Mortgage.”

* The number registered being 7000 in 1856, 7,500 in 1857, 8000 in 1858, 8,500 in 1859, 9000 in 1860, and 9,818 (!) in 1861.

The question discussed was, If a person die possessed of leaseholds (say at the value of £2000) which he has mortgaged for £1,500, must his executor pay probate duty on the whole £2000, or on the *net value* of his testator's actual interest? The usual practice has been to pay duty on the whole gross value, without deducting the mortgage, and this practice is founded on the 55 Geo. III., c. 184, s. 38, which enacts "that the *estate and effects* of the deceased shall be valued" (for the purposes of probate) "*without deducting anything on account of the debts due and owing from the deceased.*" Mr. Reynolds, whilst admitting that a mortgage, if created by the testator himself, was undoubtedly a "debt owing by him," contended that the "estate" of such a testator in the mortgaged property was only the value of equity of redemption subject to the mortgage, and that any executor might conscientiously make the required affidavit on that ground. He stated that he had pursued that practice for fifteen years, and no objection was taken by the Stamp Office until 1858, when Mr. Timms threatened Exchequer process against one of his clients who had so acted, but upon his submitting his reasons, the objection was waived, and the account was passed, as it had been in several subsequent cases. He also pointed out that this practice was far more beneficial to clients than paying the duty first, and getting a return afterwards on account of debts, for the latter remedy could not be pursued without paying off the mortgage within three years, which was often inconvenient and sometimes impossible. In small cases especially, the cost of getting a return of duty was greater than the sum returned. The discussion which took place ended in a resolution requesting the committee of the association to obtain, if possible, an official decision of the question.

Another paper, not so purely professional in its subject, but containing many valuable suggestions and remarks as to the laws relating to the relief and settlement of the poor, was read by Mr. C. A. Smith, of Greenwich.

As is the custom of Englishmen, the members of the

association alleviated the graver discussions by dining together on the first day, and on the second enjoyed the hospitality of their Birmingham brethren at a dinner presided over by Mr. J. W. Whateley, the President of the Birmingham Law Society.

ART. XI.—THE LEGAL RIGHTS OF HUNGARY.

The Addresses of the Hungarian Diet of 1861, to H. I. M. the Emperor of Austria, with the Imperial Rescript and other Documents. Translated for Presentation to Members of both Houses of the British Parliament. By J. HORNE PAYNE, ESQ., M.A., Lond., of the Inner Temple, pp. 101. London: Bell and Daldy, 1862.

WITHIN the last fifteen years a remarkable change has come over the political feeling of this country. From 1815 to 1848 the people of England were, in a great measure, occupied by their own internal affairs; the lassitude which followed the tremendous war against the first Napoleon, the long arrears of legislation that had to be made up, the growth of the popular feeling in favour of a reform of abuses, the struggle that grew fiercer every year between the occupants of office and the advocates of change, all conspired to rivet the attention of the nation on its home politics. When the great Bill had become law, and the current of popular impulse was poured into our Government and Legislature, so much had to be done to retrieve the neglect of thirty years, and to harmonize our institutions with the living wants of the nation—law reform, municipal reform, administrative reform, the removal of religious disabilities, the simplification of the tariff, and the consequent freedom of trade, so completely occupied the political mind of both parties in the state—that foreign affairs were looked on as of minor importance, only claiming a brief consideration when a Syrian war, or a Greek or Tahiti squabble, made a brilliant debate in Parliament, and

a nine days' wonder at the clubs. During by far the greater part of this period of our history, the profound tranquillity which reigned over continental Europe encouraged, if it did not justify, some apathy on our part; and it is singular enough, that the conclusion of the last civil contest in which the passions of Englishmen were seriously roused, should have nearly coincided with that terrible outburst of revolution on the Continent, which has broken up the dreams of universal peace, produced already two bloody wars, and perplexed every nation, and England not the least, with that fear of change, and anxious speculation as to coming events, which inevitably make the foreign relations of a state its leading political idea.

If any proof were wanting of the absorbing nature of our interest in foreign affairs, it would be found in the influence which they exert over the state of our political parties. Twenty years ago, an eight-shilling duty on corn could convulse the kingdom; but, keen as party strife was in those days, we doubt whether a ministry could have been formed or overthrown on a pure question of foreign policy. At the present moment, when the most eloquent of agitators fails to raise a breeze for even a moderate electoral reform, the Liberal party prolongs its tenure of office through its sympathies for Italian freedom. Or rather, it would be more just to say, that the Liberal party have this advantage in the present balance of political strength,—that in the one branch of politics which commands any real interest, they possess a clear and definite policy, approving itself to the judgment of the nation, while the Conservatives fail to show any foreign policy at all. Crippled by their new Ultramontane allies, and perplexed by their traditional conviction that the treaties of 1815 had the same origin as the Ten Commandments, they are unable to announce any principle which will bear the light of popular debate. The Liberals, on the contrary, know what they mean, and are not afraid to proclaim it; their principle is much the same as that enunciated (before its time) by an old Scotch patriot on the scaffold—that the Almighty has not created the

millions of the human race saddled and bridled for use, and a few score booted and spurred to ride them. They hold the right of every people to judge for itself as to its own institutions and rulers; they are opposed to any invasion of just liberty, either by dynastic intrigue or military violence; and they are firmly of opinion that no nation can be governed by brute force either with happiness to the subject or profit to the sovereign. In other words, they are for self-government and non-intervention; and the vast majority of the English public, even many of those who differ from them on other points, steadfastly support their policy.

Another remarkable proof of the root taken by foreign politics in the minds of Englishmen is the fact that the people, at any rate in their avowed convictions, are ahead of their statesmen, and instead of following passively in the wake of authority, judge of continental affairs for themselves. This was so in reference to Italian independence, which was advocated by thinking men, and had become a popular idea, before it was heartily supported by any prominent statesman, with the exception, perhaps, of Mr. Gladstone. It is even now the case with Hungary, a country which has not yet received justice at the hands of our leading politicians, but in whose cause the sure instincts of the people have long since declared themselves. It was the misfortune of the Hungarians that thirteen years since they were compelled to wage a sanguinary conflict for their constitutional rights under peculiarly difficult circumstances, and at a time when the merits of the controversy between themselves and the Emperor of Austria were very imperfectly understood. Driven to desperation by the overpowering forces that were brought to crush them, and by the apathy exhibited in England and France, they suffered themselves to be finally persuaded into violent measures, which injured an otherwise righteous cause, and in some degree blotted out the sympathy that was rising in their favour. But the terrible overthrow which befell Hungarian patriotism was not without its compensating results.

During the years of grinding oppression which followed the surrender of Georgey, party and local animosities were sunk in the one resolve to win back the ancient constitutional freedom of the land; while the emigrant soldiers and statesmen of Hungary spread everywhere the story of her wrongs, and roused a deep interest, especially in this country, in her future fortunes. Englishmen could not withhold their attention from a constitutional history which in so many respects resembled their own. They were surprised to find that in a country almost overlooked in their historical studies there had existed for at least six centuries institutions similar to those of England; a limited monarchy, a hereditary nobility, a house of representatives with the sole power of taxation, a system of local self-government more perfect, perhaps, than any other, and rights of personal freedom secured by immemorial usage. A country, too, in which religious liberty had been secured by a Catholic majority, and where free speech and writing, and a proud attachment to ancient franchises, had flourished for generations side by side with a chivalrous loyalty and a steady respect for law. It was impossible, we repeat, for Englishmen to withhold their sympathy from a nation who had inherited from old times recollections so strikingly akin to their own; as tales of Austrian oppression and lawlessness reached this country, the sympathy grew stronger; and when at length it was announced that a Hungarian Diet was again assembled, after the anarchical tyranny of twelve years' duration, and that the civil struggle for Hungarian rights had recommenced, the eyes of this country were turned with peculiar interest to the debates and other proceedings at Pesth. It was therefore with much disappointment that the coldness of our statesmen, whenever the name of Hungary was mentioned in either House of Parliament, was observed: yet it was hoped that the frigidity of their tone was forced on them by the necessities of State policy, and that in their hearts, like the rest of their countrymen, they were true to the traditions of constitutional independence. Much to the surprise of

many, and certainly to the regret of the distinguished body over which he presided, Lord Brougham at this juncture stepped out of his way to utter discouragement to Hungarian patriotism, by informing the Social Science Association at their Dublin meeting, that the Austrian Emperor had already restored to his Hungarian subjects their ancient constitution, and only refused to them the alterations which had been made in that constitution during the revolutionary period of 1848.

The statement was so erroneous that none acquainted with the facts of the case could be swayed by it for a moment; but it was felt at Pesth and elsewhere that words spoken by so illustrious a man on such an occasion might produce unfortunate misapprehension, not only in this country, but over the whole Continent; and the leaders of the constitutionalists in Hungary (embracing both parties in the Diet, and nine-tenths at least of the whole nation) accordingly resolved "to correct the impression which a statement so inconsistent with fact, from so high an authority, could not fail to produce upon many who might incline to take some interest in the controversy then pending between H. I. M. the Emperor of Austria and his Hungarian subjects. This object, it was thought by the most eminent members of both parties, could best be attained, not by an *ex parte* statement, but by placing without comment an English translation of the original documents—both the Addresses of the Diet and the Imperial-Royal Reply—in the hands of the Members of both Houses of the British Parliament."

The task of preparing this statement was entrusted to Mr. J. Horne Payne, whose knowledge of the Hungarian language and history peculiarly fitted him for the task. We are bound to say that he has executed his undertaking with ability and judgment, and placed before us, with explanatory notes, a series of documents which lucidly describe the attitude of the Hungarian Diet, and conclude the question as to the illegality of the Emperor's proceedings. The accuracy of the translation is vouched for by Baron Podmanicky, Vice-President of the

House of Representatives, and we heartily commend this brief volume, consisting of the imperial writ of summons for the Diet, the two addresses of that body, and other documents, to all interested in the most remarkable civil contest that has taken place since Hampden and Pym confronted the royal invader of our liberties.

For the benefit of those of our readers who may not have time or inclination for the perusal of these documents, we will endeavour to give a succinct account of the points at issue between the Emperor and the Diet; and in doing so we shall hope to refute the statement conveyed in the words of Lord Brougham. We allude to his Lordship with some reluctance, because we are thoroughly convinced that he has been misled by erroneous information, and that his heart is with freedom in Hungary as elsewhere; but as he has embodied in the sentence referred to what we fear is an opinion prevalent in some other quarters, we shall take his words as the proposition to be dealt with, and shall demonstrate, we trust, to the satisfaction of our readers, that the ancient constitution of Hungary has never been restored since 1849, and that the demands of the Diet are as legal and just, as the pretensions of the Emperor are unfounded.

By the laws of Hungary, then, the king cannot be crowned, and consequently cannot enter into the full enjoyment of even his limited prerogative, until he has taken the coronation oath, and issued the "diploma inaugurale." By the oath he undertakes to preserve intact the franchises and territories of the kingdom, and in the diploma he renews this promise in a more detailed form, and in language which is settled by the Diet. This oath is as old as 1222, when Andreas II. granted the "Aurea Bulla," the Magna Charta of Hungary, and its words have remained unaltered in substance to the present day. The only sovereign, prior to the present reign, who did not take the coronation oath, was Joseph II., who reigned despotically from 1780 to 1790, when he repented of his conduct, cancelled all the decrees he had issued, and made preparations for his

legal coronation, which was only prevented by his death. An Act was passed by the Diet in 1790, providing that the coronation must in future take place within six months of the accession.

But when the King of Hungary had been duly crowned, he did not thereby become possessed of any arbitrary power; he shared the power of legislation, as the sovereign of this country does, with the Parliament, which consists, as with us, of a house of hereditary nobles, and a house of elected representatives. He has never had the power to make or unmake a law, to raise a shilling by taxation, or to levy a recruit for the army;* he could never legally supersede the established tribunals, nor imprison a subject save in due course of law.

These ancient franchises of the kingdom were solemnly reiterated in the famous document which is known as the Pragmatic Sanction. This compact between the House of Hapsburg and the Hungarian nation was made in 1723, when the Diet agreed to waive the Salic law of the country, and admit the female descendants of the reigning house to the throne, on certain specified conditions. They stipulated that Hungary should always remain an independent kingdom, subject only to its own laws, and that the king should observe the rights, liberties, and laws of the land, should take the coronation oath, and issue the inaugural diploma. Under this sacred compact the present Emperor of Austria, descended from the female line, claims the Crown of Hungary, and

* "We will not now appeal to our older laws, which show, beyond dispute, that so long as taxes have been paid, since the first standing army was established, the granting of taxes and the raising of recruits have been the undoubted rights of the nation, which she has continuously exercised through her Diet. We refrain from recapitulating the detailed exposition in the text of the 8th Act of 1715, and the 19th Act of 1790, and will content ourselves with quoting the 4th Act of 1827, which declares that, 'as well the decreeing of all kinds of taxes, and other subsidies, in gold or in kind, as also the granting of recruits, belong to the province of the Diet to discuss and settle, and cannot, under any pretext, even in the most extraordinary case, be withdrawn from it; that the taxes granted by the Diet cannot be increased without its consent, nor any new tax imposed, nor recruits raised.'"—*Second Address of Diet of Hungary.*

by its terms, as an honourable man, and a lawful sovereign, he is unquestionably bound to abide.

The enactments passed by the Diet in 1848 did not alter any of the leading principles of the Hungarian constitution. They abolished the exclusive privileges of the nobles, did away with several oppressive imposts, and enlarged the electoral franchise; but we find from his Rescript to the Diet that the Emperor has given his express approval to these provisions,* and only objects to those which concern the relations between Hungary Proper and Croatia, and those (but this point is not quite clear) which transferred some portions of the old local legislation to the jurisdiction of the Diet. By what figure of speech can it then be said that the ancient constitution of Hungary has been restored? Up to the present moment the Emperor has never been crowned as King of Hungary, has never taken his coronation oath, or issued his diploma; he has promulgated laws on his sole authority, has levied taxes without consent of the Diet, has superseded the common law courts by military tribunals, and has imprisoned his subjects by arbitrary power; at this moment illegal exactions are being wrung from the Hungarian people by the license of a soldiery; and every semblance of constitutional government is purposely set at nought. We do not colour the picture by dwelling on all the brutality and insolence which characterise the Austrian army in its unlawful occupation of the country; this, however insupportable to the unhappy victims of the wrong, is only an incident to the illegality—we simply ask whether such a state of things, such a mode of government, is the restoration of constitutional rule?

* "We have, in our Diploma of the 20th of October, 1860, solemnly recognised as just, and confirmed the principles of the laws of 1848, by which the privileged position of single classes is abolished—the qualification to possess property and hold office extended to all—the obligations of the *Urbarium*, *Tithe*, and those of the subject class cancelled—the duty of aiding in supporting the burdens of the State, the liability to serve in the Army, declared to be common to all—and lastly, the right of suffrage extended to
 "who before had not enjoyed it."—*Rescript of H. I. M. the Emperor of*
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But it may be said, that if the Hungarians are now suffering the evils of absolute military sway they have no one but themselves to thank for it, since they refused to avail themselves of the offer made by the Emperor to send delegates to the General Council of the Empire at Vienna. The answer to this is short and simple: Hungary is an independent kingdom, possessing her own laws and institutions, which she has a right to retain until she relinquishes them of her own free will; she did not choose to give up the power of self-taxation and the advantage of national independence, in order to send, as was proposed, 85 members to a house of 343 representatives, of whom the majority would be elected by nationalities with interests diverse from her own. Nor is the question of the legal right of Hungary to abide by her own constitution in any way affected by the wisdom or folly of this refusal by her Diet. When there are two parties to a bargain it is open to either to decline the contract. A woman may be foolish to refuse an offer, but it does not follow that it is lawful to marry her by force. Naboth might have done well to accept the proffered terms for his vineyard, but Ahab was not therefore entitled to seize the land by violence. So in this case, the Emperor was entirely justified in asking the Hungarians to give up their constitution, and to fuse their national government in that of his other territories; but he was not justified, either as a politician or a gentleman, in turning on them with temper when they declined his overtures, in dissolving the Diet, and subjecting the whole land to tyranny and rapine.

This question of the union between Austria and Hungary is the point on which much of the controversy turns. The Diet maintain that the union is simply personal, like that between Sweden and Norway, the identity of the individual who wears the two crowns of Austria and Hungary being the sole connecting link. The Emperor on the other hand alleges that the union is real, the two countries forming one indivisible state. We are bound to say that the Emperor has the

worst of the argument, the documentary evidence, even that which he brings forward himself, being clearly against him. But even supposing that the union is somewhat closer than the Hungarians are willing at the present moment to admit, we cannot see how the Emperor's case is advanced thereby. Whatever union may exist between the crowns, it is indisputable that Hungary has from time immemorial possessed a Diet. Whatever construction the Emperor may put on the Pragmatic Sanction, this at least cannot be denied, that that famous instrument stipulates for the ancient privileges of Hungary, and that Maria Theresa and her successors acknowledged the obligation. On what possible pretext of morality or law does a Sovereign who, in his diploma summoning the Diet, relies on the Pragmatic Sanction for his title to the throne, violate the provisions of that compact by ruling without a Diet, and without legal tribunals? The Emperor is in the position of a man who claims an estate by his title-deeds, while he repudiates the covenants contained in them. It is a position which every English gentleman, if we except perhaps Mr. Roebuck, will consider at least equivocal.

We are able in this country to see the real question the more clearly inasmuch as our own history furnishes us with a case in point. Rather more than a century and a half ago England and Scotland were two separate kingdoms, united by the golden link of the crown, but each ruled independently by its own legislature and administration. A treaty of union was proposed, and after considerable negotiation, was assented to on both sides, to the great and lasting benefit of each nation. It will not be denied that the Scotch would have acted most unwisely if they had declined the bargain; but suppose they had done so—suppose that national pride, and ancient hostility, had prevailed over prudence and foresight—what then? Would the English Government have been therefore justified in marching an army over the border, dissolving the Parliament in Edinburgh, superseding the Court of Session by military tribunals, quartering soldiers on the

inhabitants to raise arbitrary taxes, and in fine, ruling the country by brute force? Yet, unless morality and law vary in their principles under different skies, the same damnatory verdict which every Englishman as readily as every Scotchman will pass on the bare idea of such lawless iniquity, must be recorded against the actual perpetrator of as foul a wrong—the throned anarchist who tramples on the legal rights of Hungary.

But we should not do justice to the Hungarian Diet, nor fulfil our purpose of laying before our readers convincing proof of the justice of their cause, if we did not quote some passages from the two remarkable addresses which, during their brief session of 1861, they sent up to the Emperor of Austria. In temper and dignity, in the calm eloquence which a sense of right inspires, in lucidity of statement, close reasoning, and thorough acquaintance with ancient precedents as well as the principles of law, these documents surpass anything of the kind that has been published since the days of the Grand Remonstrance. The civil heroes whose struggles and greatness have been brought before us so vividly by Mr. Forster, are equalled by Deak and other Hungarian patriots, in learning, firmness, and moderation. When it was apparent from the Diploma issued by the Emperor, and the speech of the Imperial Commissioner in opening the Diet, that the design was to deprive Hungary of her ancient right of self-government, it was determined to oppose a resolute resistance to the attempted usurpation. The more vehement party in the Diet were indeed anxious to deny the right of the Emperor to the crown of Hungary, as he had violated the law by postponing his coronation beyond the six months allowed by statute; but the moderate party, led by Deak, one of the most remarkable men in Europe, succeeded in carrying the address to his “Imperial Royal Majesty.” It commenced with an eloquent reference to the twelve years of oppression which the nation had endured, pointed out the many illegalities which still subsisted in the government, and then went on to show how impossible

it was for the Diet to assent to the plan announced in the Emperor's Diploma.

"This Diploma would rob Hungary for ever of the ancient provisions of her constitution, which subject all questions concerning public taxation and the levying of troops, throughout their whole extent, solely to her own Diet; it would deprive the nation of the right of passing, in concurrence with the King, its own laws on subjects affecting the most important material interests of the land. All matters relating to money, credit, the military establishment, customs and commerce of Hungary—these essential questions of a political national existence—are placed under the control of a general Council of the Empire, a body the majority of whom would be foreigners. There these subjects would be discussed from other than Hungarian points of view, with regard to other than Hungarian interest. Nor is this all; in the field of Administration this Diploma makes the Hungarian Government dependent on the Austrian—on a Government which is not even responsible; and which, in the event of its becoming so, would render an account, not to Hungary, but to the Council of the Empire, which would give no guarantee for our interests, where they should come into collision with those of Austria.

"Were this idea to be legalized, Hungary must cease both in legislation and administration to be independent; her most essential interests would be subject to the legislation and administration of the Austrian Empire; in a word, she would remain Hungary only in name, whilst in reality she would become an Austrian province."

The address then sets out the nature and provisions of the Pragmatic Sanction, a "bilateral, fundamental State-compact," a "Deed of Contract," between the Crown and nation of Hungary, "by which, on the one hand, our ancestors solemnly renounced, in favour of the female descendants of the House of Hapsburg, their rights to proceed to the free election of a king," and "on the other hand, Charles III., in consideration of the aforesaid surrender, covenanted for the fulfilment of the conditions for which the nation stipulated, namely, for the preservation of the independence of the country, of its rights, liberties, and laws." The history of the dealing of subsequent sovereigns with Hungary is recited, and, among others, the Act of 1790, by which Leopold II:—

"Acknowledged and declared that, 'although by virtue of the 1st and 2nd Acts of 1723, which extended the right of succession to

the female line, the crown of Hungary would always devolve on the sovereign who possessed, according to the established order of succession, the other Hereditary States; yet Hungary, with its annexed parts, was notwithstanding a free kingdom, in the entire administration of its laws independent; that it was therefore not subservient or dependent on any other empire or people, but possessed its own constitution and administration, and was to be governed not in the manner of the other provinces, but by its rightfully crowned king, in accordance with its own laws and customs.’ ”

The question of the nature of the union between Hungary and the Hereditary States of the Austrian Empire is argued with striking acuteness and research; the tie is shown to be strictly personal; and then the Diet, in the following paragraph, give their main reason, to us we confess conclusive, why it would be impossible for Hungary to consent to a fusion with Austria and to a common Parliament at Vienna:—

“ At present the Hereditary States are members of the German Confederation. Towards it they have obligations to perform involving burdens to support; the decisions of the Confederate League have binding force on all the states belonging to the Confederation. On the other hand, Hungary is not a member of the German Confederation; the German interests, which the Austrian provinces are bound to protect and further, are for us foreign interests. The power of the Confederation, which, in the Austrian provinces, possesses, in some points, binding authority, is to us entirely foreign. Germany may carry on a war in its own interests, or its frontier may be attacked; Austria may be compelled to take part in such a war, and to join in defending the menaced frontier; but *their* war is not *our* war, *their* interests not *our* interests; they will not assist us in our battles, or aid us to repulse an attack on our frontier, for we are not members of the Confederation. Is it possible that countries politically so differently situated should be connected more closely than by a personal union? What surety should we possess that in a Council of the Empire, whose overwhelming majority is bound to the German Confederation, in accordance with the essential principles of the League,—that, in such a council, where our interests were not identical with those of the Confederation, our rights would be respected, and our interests spared? A closer union would place us under the control of an Austrian majority, it would make us dependent on an entirely foreign policy,—that of the German League, whilst we could claim no corresponding services in return.

Having adduced the instance of Sweden and Norway subsisting side by side in amity, but by a simple personal union, and having expressed their loyal desire to share equitably the burdens of the empire, even in this respect "to go beyond what strict legal obligation would require," the Diet thus firmly repudiate consent to any sacrifice of national independence :—

"We therefore hold it necessary solemnly to declare that we can sacrifice to no considerations and to no interests of whatsoever kind the constitutional and legal independence of our land, which has been guaranteed to us by a fundamental State-compact, by statutes, by royal inaugural diplomas, and by coronation oaths, that we shall cling to it as the essential condition of our national existence. Hence, we cannot consent to the withdrawal from the province of the Hungarian Diet of the right to decide all and every matter concerning public taxation, and the raising of military forces. As we entertain no wish to exercise the right of legislation over any other country, so we can divide with none but the King the right of legislation over Hungary; we can make the Government and Administration of Hungary depend on none other than its King, and cannot unite the same with the Government of any other lands; therefore we declare that we will take part neither in the Council of the Empire, nor in any other assembly whatsoever of the representatives of the Empire; and further, that we cannot recognise the right of the said Council of the Empire to legislate on the affairs of Hungary, and are only prepared to enter on special occasions into deliberation with the constitutional peoples of the Hereditary States as one independent nation with another."

The Diet proceed to complain of the non-completion of their members, the writs having been withheld from the annexed provinces of Hungary, such as Transylvania, Croatia, Slavonia, a course directly in contravention of the ancient constitution, and opposed to the express duties of the Crown; and they record their resolution not to pass any laws, or negotiate for the coronation, until their body has been made complete. They also point out the continued suspension of some of the fundamental laws of the constitution; "we have no parliamentary government, no responsible ministry. Our laws regulating the press, and the trial by jury in connexion with it, have not been restored. In opposition to distinct enact-

ments, direct taxes have been imposed, without the intervention of the Diet, by arbitrary power"; while, as if to demonstrate that the advances of the Emperor were insincere, a decree had just been issued, as they show, for the collection of illegal taxes by military force. And this was what has been termed a "restoration of the ancient constitution"! Most truly do the Diet say:—

"A parliamentary Government, a responsible ministry, freedom of the press, with its concomitant trial by jury, and the right of self-taxation, are the strongest guarantees of constitutional liberty. Our sanctioned laws have given us these guarantees, and never shall we consent to their abrogation or curtailment, however modified; we shall always regard a temporary suspension of these laws as a suspension of the constitution—as a denial of the constitutional principle itself.

After stating, in remarkable contrast to the blustering tone of disregard to moral obligation adopted by Austrian statesmen, that "neither might nor power is the end of government; might is only the means, the end is the happiness of the people," the Diet proceed, in the following words, to summarise the representations which they thought necessary to lay before the Emperor.

"The King of Hungary becomes only by virtue of the act of coronation legal King of Hungary; but the coronation is coupled with certain conditions prescribed by law, the previous fulfilment of which is indispensably necessary. The maintenance of our constitutional independence and of the territorial and political integrity of the country inviolate, the completion of the Diet, the complete restoration of our fundamental laws, the reinstitution of our parliamentary Government and our responsible ministry, and the setting aside of all the still surviving consequences of the absolute system, are the preliminary conditions which must be carried into effect, before deliberation and reconciliation are possible."

We have not space for more than a very cursory review of the Imperial Rescript in reply to this remarkable address, and of the second address by the Diet in way of rejoinder. The Rescript attempts to show that the functions of the Hungarian

Diet had always been limited as to taxation, and that the union between Hungary and the Hereditary States was real and not personal. The chief arguments relied on for the latter position are the unity of the army, the fact that Hungary has never had a separate ministry of foreign affairs, and the Act of 1741, by which the husband of Maria Theresa was made guardian of the heir in event of a minority instead of the Palatine of Hungary. To these three arguments it is replied in the second address, that though Hungarian regiments have fought side by side with Austrian soldiers in the wars of the Empire, yet the number of troops and the mode of levying and providing for them was always regulated by the Diet, and an Act of as late as 1840 is quoted on this point:—"Whereas in accordance with the demand of the Estates, based on the law, reports have been, in the name of His Majesty, laid before them of the position of foreign affairs, and of the present state of the Hungarian regiments, in consequence of these reports, and in consideration of these exigencies, the Estates grant, as subsidies, to meet the said requirements, of their own free-will and accord, and without prejudice, 38,000 recruits, under the following conditions." If this, and such as this, be the documents on which the Emperor relies for proofs of his right to raise armies in Hungary without leave of the Diet, he is certainly in evil case.

With respect to foreign affairs, the Diet reply that they have always been satisfied to leave them in the hands of the sovereign, as King of Hungary, whose ancient prerogative it is to transact them, subject to the general control of his Parliament; but they point out several statutes to show that the foreign interests of Hungary have never been merged in those of Austria; and as to the guardianship of a minor heir to the Crown, they completely turn the tables on the Emperor in the following sentences:—

"If the Constitutional Independence of Hungary were not clearly expressed in the Pragmatic Sanction and other laws, this said 4th Act of 1741, in the Rescript referred to, would alone

establish it beyond all doubt. For the Estates of the land chose the Consort of Her Majesty, Francis Duke of Lorraine, Barri, and Hetruria—who had not yet been elected Roman Emperor—co-regent with her most gracious Majesty, and entrusted him with the guardianship of the heir to the Throne, in the event of his minority. But they explicitly declared that this ‘election took place of their own free-will and accord, and that no Royal Consort should be entitled to found claims upon this Act as a precedent.’ They further provided that, during the co-regency, the inseparability and hereditary right of succession as by the 1st and 2nd Acts of 1723 established, should be unprejudiced; that the laws and privileges of the country should be maintained; that the office of Palatine should not be shorn of any of its prerogatives; that the affairs of the country should be administered in accordance with the laws; and that His Majesty, the co-regent, should not exercise the highest Royal functions, nor the *jura majestatica*, which, according to the laws, belong only to the crowned Kings.

“If Hungary had possessed no Constitutional Independence, if, according to the laws, the right of guardianship of the infant Hungarian King had not devolved on the Palatine, then it would have been unnecessary to pass this Act, seeing that to the father belongs the right of guardianship naturally, as well as by the laws of the Hereditary States. But just because the political position of Hungary is entirely different from that of the Hereditary States,—just because there existed no real union, it was necessary to pass a separate law, that with reference to Hungary the father might not be deprived of the right of guardianship of his own son.”

The answer as to the alleged restriction of the financial powers of the Diet is equally satisfactory, but for this and other arguments we must refer our readers to the Addresses themselves. We cannot pass by, however, the extraordinary declaration of the Emperor which brought the affairs between himself and the Diet to a crisis. Unable to deny the nature and extent of his obligations to Hungary, and feeling himself, probably, defeated by the Diet in logic and in statement of fact, he had recourse to the expedient of repudiating the terms to which his predecessors had assented, on the ground that he is “*not personally pledged*” to the laws he is violating; in other words, that a sovereign who inherits a crown has a right to set aside all previous statutes and contracts which he finds inconvenient to himself! The Queen of England, by this reasoning,

may repudiate the terms of the Act of Settlement, as it was passed more than a century before her birth; or if inclined to revise the Reform Act, she may declare herself "not personally pledged" to a measure enacted under her immediate predecessor. This last, indeed, is a case precisely in point, since the Emperor claims to cancel the Acts of 1848 (or rather such of them as are opposed to his own ideas) because they were passed in a period of excitement, and assented to only by his uncle. Well do the Diet say in reply to this audacious dishonesty:—

"If the sovereign has the right not to consider personally binding on himself the laws sanctioned by his predecessors, what guarantee have we for our constitution, for our legal liberty, for laws created and to be created; on what are the peoples of the Empire, on whom your Majesty has bestowed constitutional liberty, to rely? Every successor of your Majesty can declare that he does not think this or that constitution, which his predecessor has sanctioned, compatible with the interests of the Empire, or with its position as a great power, and does not consider it binding for his person. If we cancel from the constitution that continuity of obligation which passes from generation to generation, and binds as much the sovereign as his peoples; every constitution, the safety of every state, becomes the plaything of circumstances. This continuity is the basis of the liberty of the people and of the throne, of the sovereign, and of his hereditary right of succession. The denial of that continuity annihilates that interposing power, without which, on a collision of interests, every question must be decided by arbitrary force, or by the edge of the sword, without which peoples and their princes would have no other choice but Absolute Government or Revolution. This salutary mediating power is confidence and belief in the durability of right, which cannot even be conceived apart from continuity of obligation."

We are not surprised that after this avowal of faithlessness on the part of the Emperor the Diet spoke of "the thread of negotiation as broken off," and re-insisted in firm, though perfectly temperate language, on their constitutional rights. Francis Joseph, with some good qualities, and some materials for a higher character, seems to be afflicted with the same mental peculiarities as brought so much calamity on our own unhappy Charles. Like Charles he has no idea of the honour-

able fulfilment of reciprocal obligations between a sovereign and his people. Like Charles, he inspires with profound distrust those who have to negotiate with him on national affairs. Like Charles, too, he exhibits a petulance when thwarted, and an impatience of sound advice, which prove his mind to be destitute of the true capacities for a ruler. The Diet, therefore, after once more recounting the legal rights of their country, and the oppressions which it now endures, concluded with a solemn declaration that they held fast to the Pragmatic Sanction, and to all the conditions contained in it, without any exception, and that they must refuse to "regard or recognise as constitutional anything which is in contradiction to any part of it." And after categorically refusing to accept the Imperial Diploma, or to send representatives to the Austrian Council; after declaring that all Acts passed, obligations incurred, or loans contracted by that Council, were invalid as respects Hungary; after further declaring that they will not surrender their lawful right to vote supplies, to regulate taxes and military levies, and to constitute with the Sovereign the Legislature of Hungary,—that they are "compelled to regard the present administration of the country, especially the despotic conduct of unconstitutional officials, as illegal, and subject to punishment according to the laws," they finally conclude in a sentence which, for the eloquence of dignity and patriotism, may match with anything of ancient or modern times:—

"It is possible that over our country will again pass hard times; we cannot avert them at the sacrifice of our duties as citizens. The constitutional freedom of the land is not our possession in such a sense that we can freely deal with it; the nation has with faith entrusted it to our keeping, and we are answerable to our country and to our conscience. If it be necessary to suffer, the nation will submit to suffering, in order to preserve and hand down to future generations that Constitutional Liberty it has inherited from its forefathers. It will suffer without losing courage, as its ancestors have endured and suffered, to be able to defend the rights of the country: for what might and power take away, time and favourable circumstances may restore; but the

recovery of what a nation renounces of its own accord, from fear of suffering, is matter of difficulty and uncertainty. The nation will suffer, hoping for a better future, and trusting to the justice of its cause."

The Emperor, probably convinced that this second Address was unanswerable, at once dissolved the Diet. He has since ruled Hungary by force in admitted violation of the law.

We have dwelt on this history, because the vivid interest of Englishmen in foreign politics, on which we observed at the commencement of the article, will cause our readers to appreciate every turn of the conflict. We cannot doubt of the opinion with which any impartial man, conversant in any degree with constitutional law, will rise from a perusal of the foregoing pages, and still more from that of the documents on which our remarks have been founded.

Baron Podmanicky, in a short letter addressed to Mr. Horne Payne, which will be found at the commencement of his volume, says that, "if there is one country in Europe whose opinion is valued by us, it is England."

The Baron, and every Hungarian patriot, may rest well assured that whatever mistaken words may have fallen from a distinguished man, or whatever may be insinuated to the contrary by supple politicians or railway negotiators, the people of England are true to the great principles of constitutional freedom, of which they know the value themselves, and desire to see triumphant in Hungary as elsewhere in Europe. Nor let the Emperor or his Austrian statesmen delude themselves with the belief that the public opinion of this country, which controls any ministry, will suffer an active alliance with a Government which contemns moral obligation, and outrages law and justice. The system at present maintained in Hungary is in truth an anarchy; and the ruler who at this time, and with the political prospect before us, perpetuates anarchy, is the public enemy of Europe.

POSTSCRIPT.—THE SAVIGNY FOUNDATION.

WE have been requested to make known to the legal profession of the United Kingdom that an effort is now being made in Germany, having its centre at Berlin, to found an institution in memory of the illustrious Savigny. The contemplated foundation is intended to encourage the study of Comparative Jurisprudence, by giving prizes for essays on the subject, and establishing scholarships, both of which, as we understand, will be open to all countries. The object, therefore, not only commends itself to all the admirers of the great jurist in whose honour the institution is to be erected, all readers of his profound and varied works, but also to those who are interested in the prosecution of that comparative study of the different systems of jurisprudence existing in the world, on which the true science of law must be built. We understand that the Crown Princess of Prussia, our own Princess Royal, with that intelligent sympathy in all objects of public utility which may be expected from any child of Her gracious Majesty and the Prince Consort, has shown a warm interest in the undertaking, and that it is at the suggestion of Her Royal Highness that an appeal is likely to be made to the Bars of the United Kingdom, and other members of the legal profession, in aid of the Savigny Foundation. Among the contributors to the fund, in addition to the Princess Royal, we observe the names of the Kings of Prussia, Portugal, and Wurtemberg, of the Chamber of Advocates at Paris, the University of Giessen, and many others. The sum already subscribed amounts to nearly £800. We understand that Sir Erskine Perry, the learned translator of Savigny's *Treatise on Possession*, and other students of his works, are desirous of uniting in an effort to form a corresponding committee in this country in aid of the Savigny Foundation. We heartily commend the undertaking to the liberal consideration of our readers; and we may add, that any inquiry on the subject addressed to the Editor of this Magazine, at our publishers, will receive immediate attention.

Notices of New Books.

[*.* It should be understood that the notices of new works forwarded to us for review, and which appear in this part of the Magazine, do not preclude our recurring to them at greater length, and in a more elaborate form, in a subsequent Number, when their character and importance require it.]

The Magisterial Synopsis. A Practical Guide for Magistrates, Clerks, Attorneys, and Constables: Summary Convictions, Indictable Offences, with their Penalties, Punishments, Procedure, &c., being Alphabetically and Tabularly arranged. By G. C. Oke, Assistant Clerk to the Lord Mayor, Author of "Magisterial Formulist," "A Handybook of the Game and Fishery Laws." Eighth Edition. London: Butterworths.

THIS Book is not a manual, but a comprehensive and exhaustive synopsis of the Statute and Common Law administered by the magistracy; forming a large volume of upwards of twelve hundred pages. Justices of the Peace will find in this work, taken with its companion the "Formulist," by the same author, every necessary information for the discharge of their ministerial and judicial offices. Having officiated as Assistant Clerk to the Magistrates' Bench for a long period, and latterly at the principal Metropolitan Court, Mr. Oke has brought to the exposition of this department of law, a practical familiarity with the course of procedure, and a special, it may be said, esoteric knowledge of the magistrate's official difficulties. Each edition has gone on increasing in popularity as well as in bulk: the new statutes and more recent learning being grafted on from time to time, and in harmonious order incorporated with the original. The author has not been guilty of the common indiscretion which affects recondite learning in the attempt to compile a useful work of practice. Following a natural method, he never allows himself to forget that the Synopsis is intended to lie on the magistrate's table for reference and consultation. The design of the work was first suggested to the author "by the inconvenience which justices and their clerks experience generally, but more especially when called upon suddenly to act, and in the bustle of a Petty Sessions, from the want of some book of reference in which may be found, succinctly and at a glance, the legal requirements of the numerous enactments respecting each offence punishable summarily." The division of the work into three parts, with the subdivisional chapters of each, very much facilitate the process of reference. The first part relates to summary convictions, the second to indictable offences, and the third to special and petty sessions

matters. It is impossible to speak in terms too laudatory of the patience and discrimination bestowed on the syllabus of these offences under each section which are arranged alphabetically. At one view information is given in contiguous columns as to the offence, the statute under which it is made punishable, the time of laying the information, the number of justices necessary to constitute a court of competent jurisdiction, the penalty to be inflicted and the mode of enforcing it, to whom the penalty is payable, and in what cases and during what time it is competent to appeal. The accuracy and completeness of the information compiled, as well as the perspicuous method happily conceived, and scrupulously observed, in the arrangement of that information, are recommendations sufficiently powerful to sustain, and probably to augment, its popularity.

The unwieldy size of this volume is perhaps its greatest fault, and for that the Legislature, and not the author, is responsible. There is a point in the condensation of law beyond which the severest and most judicious pressure can effect no diminution without mutilating the substance itself. Mr. Oke has, with considerable success, extracted the pith of judicial decisions and Acts of Parliament, but with all the author's ingenuity, the work has grown under his hands from the 410 pages of the first edition in 1848, to the present awkward bulk of 1,206 pages. Year after year new statutes are passed, conferring new jurisdiction, or enlarging the powers already wielded under the old. The author feels a natural solicitude regarding the ultimate results of this system of legislation, a system which has already produced a vast number of enactments "*tam immensus aliarum super alias acervatarum legum cumulus*." Mr. Oke maintains the "urgent necessity for a uniform and comprehensive code of magisterial procedure being provided by Parliament before further matters of jurisdiction are conferred on the Petty Sessions." "When such a measure becomes law, this work would probably be reduced in size; for it is now encumbered by needless repetitions and a variety of procedure provisions in the present statute law, which a general Act could remove, and at the same time materially facilitate the duties of those who, for the most part, gratuitously have to administer this extensive branch of the law."

A Manual of Practice in the Office of Land Registry. By Henry Gough. London: V. & R. Stevens, Sons, & Haynes.

THIS Manual includes the Acts to facilitate the proof of title to, and the conveyance of, real estates, and for obtaining a declaration of title (25 & 26 Vict., cc. 53, 67); and also the general rules and orders of the registry, forms of proceedings, and tables of fees. It is intended for a practical guide to those whose professional duties may require them to take part in any proceedings under the new statute "For the Proof of Title to, and the Conveyance of, Real Estates." The author has spared no pains to render it as complete as possible, but he observes in his preface that faults must be incidental to the

first draft of a treatise on an extensive legislative scheme which has yet to be reduced to practice. "When this shall have been so far effected as to supply the means of enlargement and correction, the author hopes to offer to the profession an enlarged and improved edition." He further observes, "It cannot be expected that all the details of a system so new and so untried will be completely settled from the very first. But with the hearty good-will and co-operation of all who may be called to participate in working out this great experiment, there can be no doubt that the practice may very soon become simple, certain, and harmonious." A short introduction gives a review of the Irish system in the Landed Estates Court, and of the leading features in the Acts of Lord Westbury and Lord Cranworth.

A Manual of Common Law and Bankruptcy, founded on various Text-Books and recent Statutes, and designed as a Companion to Smith's Manual of Equity. By Josiah W. Smith, B.C.L. London: V. & R. Stevens, Sons, & Haynes, Bell Yard, Lincoln's Inn.

THIS book is written on the same plan as the Manual of Equity by the same author, and is founded, he tells us in the preface, on about sixty text-books, to which references are duly made. It is intended to serve the purpose of a first book for students in Common Law and Bankruptcy, and the author advises his readers to pass on from his pages to those of Brown's Commentaries, Addison's Contracts and Torts, John William Smith on Leading Cases and Contracts, Stephen's Commentaries, and Best on Evidence. As an introduction to these standard works, we think that Mr. Smith's Manual may prove useful, and we would even go further, and believe that the practitioner and the legislator may occasionally find instruction in its pages. The great difficulty in all such works is that they have an inevitable tendency either to run into a dry recital of points, or to degenerate into a loose, superficial statement. As far as we are able to judge, Mr. Smith has to a great degree avoided both these errors, and we quite believe him when he says that "great has been the expenditure of time and thought in selecting, arranging, digesting, compressing, defining, distinguishing, and qualifying, which the preparation of it has involved." The least satisfactory part of the work is that relating to Bankruptcy, which is really nothing more than a brief (but we are bound to say very careful) compendium of the statute law on the subject. This is hardly a chapter for a strictly elementary manual; the first days of a student are not to be occupied with the details of registrar's duties, and County Court jurisdiction; it should rather be the object of an instructor at this stage to give a just survey of the principles and objects of law, and in this respect the work, as a whole, is not deficient.

Papers read before the Juridical Society. Vol. II., Part V. London : Wm. Maxwell. 1862.

THE Fifth number of the Juridical Society Papers consists of half a dozen articles, written with the care, originality, and learning, which usually distinguish the contributions of that learned society to the Science of Jurisprudence. Some of them are speculative in their character, but the majority are directed towards immediate practical results. The dissertation by Mr. Edward Webster, which has also been published in a separate pamphlet, on Promotion at the English Bar, will probably attract more attention than it has hitherto done. Unfortunately, the author conceives himself to be the victim of the system which he undertakes to denounce, and by the injudicious intrusion of personal matters, provokes the suspicion that the well-pointed shafts hurled against the existing evil have been deeply dipped in the gall of bitterness. There is no valid reason, however, why those who in actual experience have been forced to suffer a wrong, may not be the best qualified expounders of its cause. This, like every other question deserving of serious thought, should be considered dispassionately, and without reference to individual circumstances. Mr. Webster, after tracing to its origin the division of the Bar into the Inner and Outer Bar, contends that the power now vested in the Lord Chancellor of conferring the rank of Queen's Counsel and Serjeants-at-Law, operates unjustly towards the Bar, is prejudicial to the interests of suitors, and encourages political corruption. He proposes that "standing" alone should be a sufficient qualification to entitle counsel to take leading business and to obtain a seat within the bar. For the encouragement of healthy emulation, it is suggested that a new order be established of a purely honorary character, and giving no monopoly of business, to be called "The Crown's Order of Learning." Men distinguished for their professional ability are to be invested with this order, and shall have the privilege of wearing a distinguishing robe in court. The whole reasoning is grounded upon the supposition that forensic honours are now unwisely, if not unjustly, bestowed. It is evident that if merit be duly rewarded, the public good will not suffer by consigning mediocrity to the back benches.

There are two papers in the number upon kindred subjects, viz., on Codification. Mr. Marshall's paper is confined to the written law, while in the other, the author, Mr. Sweet, discusses the expediency of digesting the precedents of the common law, and regulating the publication of Reports. The two papers on International Law are very different in character : both highly meritorious. Professor Katchenowsky has visited many countries of Europe with the sole purpose of studying the great questions of International Jurisprudence. The substance of the paper, read in the author's absence before the Juridical Society, consists of the facts collected during those travels, with the conclusions deduced from them, and is a highly valuable contribution towards rightly understanding the present state of international jurisprudence. Mr. Clarke composed

his paper immediately after the affair of the *Trent*, and has, with great success, brought together the leading cases upon that subject. The new Land Transfer Acts have diminished for the present the interest which for some years has been taken by statesmen and lawyers in the alienation of, and title to, real property. Mr. Wolstenholme's scheme for the simplification of title to land has the merit of being ingenious. The whole is constructed on this somewhat startling and fundamental principle; that after a certain date no person entitled to the legal fee simple shall be allowed to make any disposition thereof except to the extent of the whole fee or for a term of years absolute. Thus at one stroke nearly the whole of the law of uses, of contingent remainders, and the doctrine of powers, would be abolished and swept to oblivion. However inferior the Lord Chancellor's Land Transfer Act may be in point of daring, and whether it may turn out a failure or not, either alternative will leave the country in a safer position than if an experiment had been made on Mr. Wolstenholme's visionary project.

An Essay on the Principles of Circumstantial Evidence; Illustrated by numerous Cases. By the late William Wills, Esq. Edited by his son, Alfred Wills, Esq., Barrister-at-Law. Fourth Edition. London: Butterworths. 1862.

It seems that Mr. Wills, during the ten years which had elapsed between the publication of the third edition of this interesting work and his death, had been constantly collecting cases illustrative of the subject. These have been inserted in the present edition, and a new section, on Scientific Testimony, has been added. Mr. Alfred Wills has finally prepared the volume for the press, and says that he appends his name "only because I think my father would have wished that some one should appear to be responsible for even these mechanical operations." It would be utterly impossible for us in a brief notice to do justice to the work; but we may perhaps recur to it in a subsequent number and in another part of our pages.

The Divorce and Matrimonial Causes Acts, with the Rules and Orders, Notes and Forms. By F. A. Inderwick, Esq., of the Inner Temple, Barrister-at-Law. London: William Maxwell; H. Sweet; V. & R. Stevens. 1862.

THIS Volume consists of a table of cases; a list of statutes relating to marriage; the Divorce and Legitimacy Acts at length, with notes of cases, and short remarks on the sections; the Rules, Orders, and Regulations, and tables of fees. There is also the table of prohibited degrees of consanguinity, and an index. The preface, which has a short, but not badly executed historical sketch of the Marriage law in England, commences with telling the old tale of Mr. Justice Maule's address to a prisoner convicted of bigamy. Why is the judge's name suppressed? and why is not the terse and vigorous language used on the

occasion more accurately reproduced? We are bound to say that this is the only fault we have to find with Mr. Inderwick's book.

The Law Relating to Juvenile Offenders, Reformatory and Industrial Schools, with practical suggestions in reference to the commitment of Children to Reformatory Schools. By T. C. Sneyd Kynnersley, Esq., Police Magistrate, Birmingham. London: Shaw & Sons, Fetter Lane.

THE Author of this book is anxious that it should be understood that it is not intended to instruct magistrates or their clerks in the discharge of their duties, the Juvenile Offenders Act having been in operation since 1847, and acted upon daily without any difficulty. It is intended for general use, and to furnish those who take an interest in the treatment of criminal destitute and neglected children with a collection of the statutes relating to juvenile offenders, and a simple statement of the mode in which the law is administered. Mr. Kynnersley's suggestions are very valuable, and, with the list of certified schools included in the book, will be found most useful to magistrates as well as to the benevolent public for whom the work is intended.

The Statutes, General Orders and Regulations, relating to the Practice, Pleading, and Jurisdiction of the Court of Chancery; with copious notes containing a summary of every reported decision thereon. By George Osborne Morgan, M.A., of Lincoln's Inn, Barrister-at-Law. Third Edition. London: V. & R. Stevens, Sons, & Haynes. 1862.

THERE are two methods upon which legal treatises may be written. The first, the most ancient as well as the most philosophical, is the least favoured by cotemporary publishers. The second imposes a heavier task on the assiduity than upon the originality of the author, and without affecting greatness or profundity accomplishes much that is practically useful. Earlier jurists in their learned commentaries and disquisitions sought to elaborate from broad principles of law, illustrated by judicial decisions and statutory enactments, exhaustive treatises having logical completeness and unity of character. They represent the hard labour of years, and have been written, not for hasty reference, or hand to mouth information, but for the thoughtful perusal of arduous legists pursuing their *viginti annorum lucubrationes*. Nor can it be denied that there are illustrious examples of this method in the works of several authors now living. They constitute the classics of legal literature. Judging from the more recent publications, however, it would seem that there is a decided tendency to discard Institutes and systematic Commentaries for ephemeral treatises, which are generally known as books of practice. Profound learning and sustained ratiocination may contribute

material assistance towards building up a philosophical system of jurisprudence, but the law of supply and demand is imperious and inexorable, and for the present, at all events, that law exacts useful, simple, and complete practical text-books. Mr. Morgan's work is professedly of this class, and merits the highest commendation for its usefulness, simplicity, and completeness. This is an excellent example of the more recent and popular method. In order to explain the pleading, practice, and jurisdiction of the Court of Chancery, all the cognate statutes are collected and arranged in regular chronological order, beginning with the 2 & 3 Vict., c. 54, and descending through the series to the 23 & 24 Vict., c. 149. A separate chapter is devoted to the exposition of each Act. Appended to the several clauses are the explanatory decisions of the Bench, in the selection of which the author has shown much discrimination and sound judgment. Considering that the Acts and Orders which constitute the framework of the volume have already elicited somewhere about twelve hundred reported decisions, the profession must feel indebted to Mr. Morgan for obviating the necessity of "noting up" the cases, by the complete and pithy analysis of such as are of principal importance. In the present state of the practice and procedure of the Equity Courts a compendious handbook of this nature is an absolute necessity. When the rules of the Court had to be extracted from the tomes of Vernon or the manuscript notes of Lord Nottingham, such text-books as Maddock, and the older editions of Daniell, were not only useful but indispensable. "But now that, thanks to the energy of the Legislature and the Judges, nine-tenths of the whole practice can be summed up in six hundred small octavo pages, it may not unreasonably be hoped that the method adopted in this volume possesses at least as much to recommend it as that of the more elaborate but more cumbrous treatises of modern days." The practitioner will find in the pages of this book ample and at the same time terse and business-like information upon almost all the questions that arise in the ordinary proceedings in Chancery. The later and more important cases are cited not only from the standard reports, but from those of the *Law Journal*, the *Jurist*, the *Weekly Reporter*, the *Law Times*, and *Equity Reports*. In the present edition the chapters on the following subjects have been revised and enlarged, viz., on Demurrers and Pleas, on Receivers and Injunctions, on Motions and Petitions, &c. &c. The volume is divided into two almost equal parts, the first being devoted exclusively to analytic comments upon the several statutes, and the latter to the enumeration and exposition of the Consolidated General Orders of the Court of Chancery. The substance of the notes as well as of the text is abbreviated in the margin, and the tables of the incorporated orders and regulations, as well as the general index, exhibit workmanlike completeness. The book does not assume to be a complete code of Chancery procedure, but is assuredly entitled to be received as a clear and accurate compendium of the New Practice, established by legislative enactment and illustrated by judicial authority.

Papers and Discussions on Jurisprudence : Being the Transactions of the First Department of the National Association for the Promotion of Social Science, London Meeting, 1862. London : Butterworths, 7, Fleet Street, E.C.

THE Transactions of the Social Science Association have hitherto been published in one octavo volume. The reputation of those volumes for the accuracy, and variety of the information communicated, having now been well established, the public are no doubt looking forward to the issue of the number for the present year with some interest. The last Congress, held in the Guildhall, when London was crowded with visitors, was attended by large audiences; and many will no doubt be glad to have reproduced in a permanent form, the information and impressions, which, by their swift succession, and on account of their very abundance, were too soon obliterated from the mind, or thrown into confusion. From the character of the papers which were read in Guildhall, and the discussions which followed, there can be little doubt that the popularity of the Transactions will be sustained, if not raised much higher. Embracing within its scope a great variety of subjects, it cannot be denied that to some readers many of these dissertations, however excellent in themselves, will have only a limited and subordinate interest. A plan has been adopted which will enable every reader to obtain the Transactions of either of the sections in a separate number. The papers which were read in the first section, on the "Principles of Jurisprudence and Legislation," have been published together in a pamphlet of convenient size, and will no doubt have a large circulation in the legal profession.

The essay "On the Importance of the Study of Jurisprudence," written with the subtilty and breadth of thought which characterises the author of the "Treatise on Evidence," forms a fitting introduction to those papers which profess to have a more practical object. The science of law is considered in this paper by Mr. Best under three divisions, viz., general, particular, and comparative. Devoted principally to the discussion of fundamental principles, the strictures upon the statute law of England, under the division of Particular Jurisprudence, are no less true than trenchant; and the gigantic evils in procedure and legislation are traced to a common cause, the neglect of the study of jurisprudence as a science.

Those who have turned their attention to the difficult questions involved in the theory of government by representatives, and to the able analysis of the same contained in Mr. Hare's "Treatise on the Election of Representatives," will be glad to find in a paper read at the Congress by the author a succinct account of the reception which his method has met with in different countries during the last three years. It would appear that in America, in the Australian colony, as well as on the European continent, the proposal to elect governing bodies by exhaustive majorities and unanimous quotas of the constituencies, has attracted many advocates. It is designed to

propose to the Council of the Canton of Geneva, the adoption of this method of election with a view to the proper representation of minorities in that assembly.

Mr. R. Denny Umlin's paper contains some very suggestive observations upon the "Conflict between the Laws of Ireland and England." The author contrasts the procedure in the Courts of Equity, the Court of Probate, the Court of Admiralty, the Courts Ecclesiastical, &c., and animadvert upon the embarrassing discrepancies in the laws of each country, maintaining that this conflict is not "a merely sentimental grievance, but a source of practical inconvenience to thousands."

It is anticipated that a determined, and we trust a successful, effort will be made in Parliament next session, to obtain the sanction of the Legislature to some scheme for the concentration of the courts and offices of Judicature. The paper read upon the subject by Mr. Thomas Webster, F.R.S., and the instructive discussion which followed, and over which Lord Brougham presided, may be consulted with advantage by those who desire information on the matter. We specially invite a perusal of Mr. Young's speech on account of the lucid and convincing statement it contains respecting the financial bearings of the project, upon which alone was grounded the opposition of the House of Commons to the bill of last year.

Mr. G. C. Oke, in a paper on "Magisterial Procedure," comments upon the extensive summary jurisdiction exercised by the magistracy in England—whether as police, stipendiary, or unpaid justices—in the numerous petty sessions and police courts; and points out the defects and diversities existing in the present practice.

The historical survey of the Marriage Laws of England and Ireland by Mr. Montague H. Cookson, D.C.L., is not the least interesting or valuable paper of the series. Within a small compass the author has succeeded in presenting an outline of the transitions through which the respective matrimonial laws of England and Ireland have passed, as well as cogent reasons in favour of their assimilation in several particulars. The antiquities and the inconsistencies of the Irish Law of Marriage are pointed out, and the disastrous results inevitably consequent upon clandestine marriage, are unsparingly exposed and severely criticised in this as well as in the complementary paper "On the Marriage Law of Scotland," by Mr. G. Harry Palmer. It is understood that the Committee of the Law Amendment Society have prepared a Report on the Marriage Laws of the United Kingdom, and that the subject will be considered at a general meeting of that Society early next session.

The Papers by Mr. A. Pulling, on "Private Bill Legislation;" by Mr. Vernon Lushington, on "The Law of Master and Servant;" by Mr. T. Hare, Inspector of Charities, on "The Law of Charitable Trusts," &c., will be found to contain not only reliable information, but original suggestions well worthy of consideration. To the series of papers is added by way of supplement a concise summary of the discussions which took place both at Burlington House and in the Guildhall.

Events of the Quarter.

PARLIAMENT was prorogued by Royal Commission on the 7th of August. The session is spoken of, we observe, as one in which little work was accomplished; yet it was fertile in measures of interest to the legal profession. The Highways Act, the Joint Stock Companies Act, the Chancery and Lunacy Regulation Acts, will alone furnish a respectable addition to the statute-book. And in addition to these are the Transfer of Land and Declaration of Title Acts, destined, if successful, to commence a revolution in the practice of conveyancing. Will they be successful? Judging by the general tone of opinion, we should answer—No. But in reality any opinion is at present premature. The Chancellor is clearly determined that if his Act is a failure it shall not lie with him; he has made an appointment of Registrar, in Mr. Follett, Q.C., which commands the applause of the whole profession, and we believe that active exertions have been, and are being made, to bring the office into good working order. It was opened on the 15th of last month, at 34, Lincoln's Inn Fields, the *habitat* of the departed Insolvent Debtors' Court, which was recently swept out of existence by another great measure of the energetic Chancellor.

WE ought to note, too, that under the Bankruptcy Act just alluded to, the Queen's Prison has ceased to be. The debtors have been all removed to Whitecross Street. The time-honoured institution of imprisonment for debt is passing away under our eyes.

IN a little matter which has made some stir, Lord Westbury has not been so happy. A Mr. Jones, of Clytha in Monmouthshire, has assumed the surname of Herbert in the place of his original designation, having previously taken the arms appertaining to his new name. Lord Llanover, the Lord Lieutenant of the county, refuses to recognise the change, and will not permit Mr. Herbert to qualify as magistrate under the new appellation. Lord Llanover, attacked in more than one quarter for his decision, laid the case, or rather *his* case, before the Lord Chancellor, and received a short reply, stating unreservedly that no man can change his name without royal license. The soundness of this opinion is much questioned, and whether it be sound or not, it should hardly have been given on an *ex parte* statement. It may be added that Lord Llanover and Mr. Herbert are relatives, and that the dispute has been carried on with all the peculiarities of tone which generally distinguish a family squabble.

HER MAJESTY and the Emperor of the French, in order to define within their respective dominions and possessions the position

of commercial, industrial, and financial companies and associations, constituted and authorized in conformity with the laws in force in either of the two countries, have concluded the following articles:—

I. The high contracting parties declare that they mutually grant to all companies and other associations, commercial, industrial, or financial, constituted and authorized in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action, or for defending the same throughout the dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions.

II. It is agreed that the stipulations of the preceding article shall apply as well to companies and associations constituted and authorized previously to the signature of the present convention, as to those which may subsequently be so constituted and authorized.

III. The present convention is concluded without limit as to duration. Either of the high powers shall however be at liberty to determine it by giving to the other a year's previous notice. The two high powers, moreover, reserve to themselves the power to introduce into the convention, by common consent, any modifications which experience may show to be desirable.

ALL our readers will be glad to know that a well deserved compliment has been paid to Mr. M. D. Hill, Q.C., Recorder of Birmingham. The town council have raised his salary from £300 to £400 a year in consideration of his "lengthened and distinguished services in the general administration of justice, and in the cause of criminal reform." We believe there was never a juster eulogy pronounced.

SIR JOHN D. HARDING, D.C.L., after holding the highly responsible and confidential office of Queen's Advocate, for ten years, has resigned, owing to failing health. Sir John Harding was appointed in 1852 by Lord Derby, as successor to Sir John Dodson, who succeeded to the judgeship of the Arches Court on the death of Sir Herbert Jenner Fust. Dr. Robert Phillimore is the new Queen's Advocate.

WE are glad to see that Mr. George Harris, well known in the profession and the literary world as the author of the "Life of Lord Hardwicke," and other works, has been appointed Registrar of the Court of Bankruptcy, at Manchester. The salary of the office, under the recent Act, is £1000 a year.

ON the 18th ult., Joseph Ormsby Radcliffe, Esq., LL.D., Q.C., expired at his residence in Dublin, after a short illness. Dr. Radcliffe discharged his onerous duties as Judge of the Consistorial Court with independence and ability, and was much respected by the profession. As Vicar General of the provinces of Armagh and Dublin he exhibited the same high qualities of mind, and will be

deeply regretted no less by all who came into contact with him in his public capacity than by his personal friends.

MR. CHARLES PEARSON, the eminent Solicitor to the Corporation of the City of London, died on the 14th of September, aged 69 years. Mr. Pearson was admitted an attorney in 1816. In the following year he was elected to the Common Council for the Ward of Bishopsgate, of which he soon rose to be a prominent member. In 1839 he was appointed City Solicitor, and in 1847 was returned to Parliament for the Borough of Lambeth, when he became one of the advocates of that reformation in the treatment of criminals which has been since to some extent carried out. Other offices of minor importance were held by Mr. Pearson, connected with the City of London. The Common Council have formally testified their gratitude for the many important benefits which Mr. Pearson was the instrument of conferring upon them.

THE *Upper Canada Law Journal*, referring to the recent appointments of Attorney and Solicitor-General of that Colony, says:—

"The new Attorney-General, the Hon. John Sandfield Macdonald, Q.C., has been for a long period in public life, being now the senior member of the House of Assembly. He received his legal education under the supervision of Chief Justices McLean and Draper, and was called to the bar in Trinity Term, 1840. In 1849, he received the honour of a silk gown, and was appointed Solicitor-General on the elevation of Mr. Solicitor-General Blake to the Chancellorship. He resigned that office in 1851, and the following year was elected Speaker of the Legislative Assembly. He also held his present office of Attorney-General for a short period in 1858. The present Solicitor-General, the Hon. Adam Wilson, Q.C., is comparatively new to political life. He was called to the bar in Trinity Term, 1839, and was for many years the law partner of the late Hon. Robert Baldwin. In 1850, during the administration of that distinguished politician, he, together with the present Chancellor, and Justices Richards and Hagarty, and others, received the patent of Queen's Counsel. He has held the office of Mayor of the City of Toronto for some years, and has the reputation of being a careful, learned, and pains-taking lawyer."

THE first Congress of the *International Association for the Social Sciences* (modelled on the English Association) was held at Brussels in the month of September. The meeting was highly successful, and the Association (which is to meet at Ghent next year) promises to be one of permanent utility on the Continent. All the officers were Belgians; but each nationality represented at the Congress was allowed to elect Vice-Presidents, Secretaries, &c., of its own, who enjoyed a corresponding honorary rank in the body at large and the different sections. The Vice-Presidents elected by the English members present, were Major-Gen. Sir Joshua Jebb, K.C.B., Chairman of the Directors of Convict Prisons; Sir John Bowring, late ambassador to China; Mr. G. W. Hastings, the General Secretary of the Social Science Association; and Mr. L. Heyworth, of

Liverpool, and late M.P. The Secretary chosen was Mr. Westlake, of the Chancery Bar, the Foreign Secretary of the Social Science Association. The President of the Section of Comparative Legislation was M. Tielmans, President of the Court of Appeal at Brussels, and in this section several interesting discussions took place, more especially on the laws relating to the press in the different countries of Europe, in which Mr. Hastings and Mr. Westlake took part, describing the law of England on that subject, and the principles which have regulated our legislation. Mr. Westlake also contributed some valuable observations on the law of joint-stock companies established in foreign countries.

WE have received copies of the official despatches from Sir Hercules Robinson, Governor of Hong Kong, to the Colonial Office, stating the result of the official inquiry into the charges made by the late Attorney-General of the colony, Mr. T. Chisholm Anstey, against a Mr. Caldwell, a Government official in the island. Mr. Anstey is entirely exonerated from the accusation made against him by Sir John Bowring, (and for which he was dismissed from the office of Attorney-General,) of having brought rash and malicious charges against Mr. Caldwell; that individual being adjudged guilty of confederating with pirates, as alleged by Mr. Anstey. In our next number we shall feel it our duty to observe on the extraordinary disclosures made in these despatches.

APPOINTMENTS.

LORD Stanley, M.P.; Lord Overstone; Sir William Erle; Sir W. Page Wood; Sir Hugh Cairns, Q.C., M.P.; Horatio Waddington, Esq.; W. R. Grove, Esq., Q.C.; W. M. Hindmarch, Esq., Q.C.; W. E. Forster, Esq., M.P.; and William Fairbairn, Esq., F.R.S.; have been appointed Her Majesty's Commissioners to inquire into the working of the law relating to Letters Patent for Inventions.

R. J. Phillimore, Esq., D.C.L., has been appointed Queen's Advocate in the room of Sir John Harding, resigned, and Her Majesty has granted him the dignity of Knighthood of the United Kingdom.

Travers Twiss, Esq., D.C.L., has been appointed Advocate-General to the Admiralty, vacant by the elevation of Sir R. J. Phillimore.

B. S. Follett, Esq., Q.C., has been appointed Registrar of the Office of Land Registry, under the Act of last Session, and R. H. Holt, Esq., Assistant Registrar.

Mr. James Grant, of the Northern Circuit, has been appointed Revising Barrister for the Northumberland district.

Mr. Edward Mortimer Archibald has been appointed Her Majesty's Judge, and Mr. William Dudley Ryder Her Majesty's Arbitrator, in the Mixed Court, established at New York, under the treaty of April 7th last, between Great Britain and the United States, for the suppression of the African slave trade.

Mr. William Nichols, formerly one of the Commissioners of the Insolvent Debtors' Court, of London, and lately one of the Registrars of the Manchester Court of Bankruptcy, has been appointed Judge of the Birmingham County Court, in the room of Mr. Leigh Trafford, resigned; and Mr. George Harris of the Temple, Deputy Judge of the Birmingham County Court, has been appointed to succeed Mr. Nichols, as Registrar of the Manchester Court of Bankruptcy.

SCOTLAND.—Dr. Douglas MacLagan has been appointed to the Chair of Medical Jurisprudence and Police in the University of Edinburgh; and Mr. James Muirhead, Advocate, Professor Elect of Civil Law, in the room of Mr. Swinton, resigned.

CHINA.—Mr. Henry John Ball has been appointed Judge of the Court of Summary Jurisdiction; and Mr. Charles May, and Mr. John C. Whyte, Police Magistrates for the Colony of Hong Kong.

INDIA.—Mr. H. M. Reily, Deputy Magistrate and Deputy Collector of Conercolly, has been transferred to Furredpore, as Magistrate, and Mr. W. H. Barker, Officiating Deputy Magistrate and Deputy Collector of Chittagong, to Nodcolly, as Subordinate Magistrate. Mr. G. S. Fayen, has been appointed to officiate as First Judge of the Court of Small Causes, in Calcutta, during the absence of Mr. Boulnois. Mr. F. B. Kemp, to officiate as Judge of the Court of Sudder Dewanny and Nizamut Adawlut. Mr. F. C. Fowle to officiate as Civil and Sessions Judge of Shahabad. Messrs. E. Jackson, C. H. Campbell, A. A. Swinton, and W. B. Buckle, Civil and Sessions Judges, respectively of Nuddea, Jessore, Tipperah, and Backergunge. Mr. A. J. Lewis, Advocate-General, Bombay, an additional Member of the Government Council of Bombay, for the purpose of making laws and regulations. Mr. R. J. Corbet, a Member of the Legislative Council, and a Justice of the Peace, for Ceylon. Mr. H. F. Mutukisna, Acting Deputy to the Queen's Advocate, for the Northern Circuit, vice Murray. Mr. T. L. Gibson, District Judge, and additional Joint Commissioner of the Court of Requests, Jaffna, vice Price retired. Mr. J. B. Graves, District Judge, Commissioner of the Court of Requests, and Police Magistrate of Kurnegalle, vice Gibson promoted. Mr. D. E. De Saram, Commissioner of the Court of Requests and Police Magistrate of Kandy, vice Graves promoted; and Mr. G. Stewart, Commissioner of the Court of Requests and Police Magistrate of Gampola, vice De Saram promoted.

MALTA.—Francesco Fitani, Esq., LL.D., has been appointed one of Her Majesty's Judges of the Island of Malta, and Mr. Henry Felix J. Recano, of the Middle Temple, has been appointed to act as Judge of the Supreme Court of Gibraltar, during the absence of Sir James Cochrane, Knt.

Necrology.

July.

- 16th. ROLFE, CHARLES WELLS, Esq., Solicitor, aged 59.
- 24th. CRAWLEY, GEORGE ABRAHAM, Esq., Solicitor, aged 66.
- 26th. BADGER, THOMAS, Esq., Solicitor, aged 70.
- 26th. HARRISON, F. J., Esq., Solicitor, aged 35.
- 30th. TRAILL, DR. THOMAS STEWART, Professor of Medical Jurisprudence in the University of Edinburgh, aged 80.

August.

- 5th. MOSELEY, JOSEPH, Esq., Chief Justice of the Gold Coast.
- 9th. HARRISON, GEORGE MARSH, Esq., Solicitor, aged 53.
- 10th. HUSTWICK, WILLIAM ANTHONY, Esq., Solicitor, aged 23.
- 12th. TURNER, JOHN, Esq., Barrister, aged 88.
- 17th. PATERSON, WILLIAM SIMPSON, Esq., Solicitor, aged 60.
- 18th. BARKER, CHARLES HENRY, Esq., Solicitor, aged 35.
- 20th. CHADWICK, WILLIAM, Esq., Solicitor, aged 51.
- 27th. HOGG, THOMAS JEFFERSON, Esq., Barrister, aged 70.
- 27th. INGOLDSBY, CHRISTOPHER, Esq., Solicitor, aged 45.

September.

- 5th. FROST, CHARLES, Esq., Solicitor, aged 81.
- 8th. POWELL, HENRY, Esq., Solicitor, aged 59.
- 14th. COOMBE, W. A., Esq., Solicitor, aged 66.
- 14th. PEARSON, CHARLES, Esq., City Solicitor, aged 68.
- 15th. HOLLINGS, J. F., Esq., Barrister.
- 17th. RICHARDSON, JOHN CRESSEY, Esq., Solicitor.
- 17th. LAWRENCE, JOHN WILLIAM, Esq., Solicitor, aged 38.
- 27th. CROPPER, JOSEPH ALMOND, Esq., Barrister, aged 80.
- 29th. YAPP, RICHARD, Esq., Jun., Barrister, aged 28.

October.

- 2nd. MILLER, HENRY, Esq., Solicitor, aged 63.
- 13th. POTT, FREDERICK WILLIAM, Esq., Solicitor, aged 69.
- 18th. RADCLIFFE, JOSEPH ORMSBY, Esq., LL.D., Q.C., Judge of the Consistorial Court, Ireland.
- 20th. RILEY, JOHN, Esq., Barrister.
- 21st. BUBB, JOHN, Esq., Solicitor, aged 66.
- 23rd. METCALFE, FREDERICK, Esq., one of the Registrars of the Court of Chancery, aged 45.
- 23rd. SMITH, J. G. S., Esq., County Court Judge, aged 64.
- 25th. KELL, WILLIAM POTHILL, Esq., Solicitor, aged 66.

List of New Publications.

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THE
Law Magazine and Law Review :
OR
QUARTERLY JOURNAL OF JURISPRUDENCE.

No. XXVIII.

**ART. I.—PROCEEDINGS ON THE TRIAL OF THE
CAUSE SEYMOUR v. BUTTERWORTH, FOR
LIBEL.**

BEFORE LORD CHIEF JUSTICE COCKBURN, and a Special Jury,
at Westminster, on the 2nd December, 1862.

Counsel for the Plaintiff, Mr. LUSH, Q.C., Mr. KEANE, and
Mr. J. BROWN.

For the Defendant, Mr. Serjeant SHEE, Mr. HAWKINS, Q.C., and
Mr. R. A. FISHER.

The pleadings were opened by Mr. KEANE.

The Declaration set out at length the article published in Vol. XIII.
of the LAW MAGAZINE, at page 158, and headed "William Digby
Seymour, Q.C., M.P." The Damages were laid at £5000.

Plea, Not Guilty, on which issue was joined.

Mr. LUSH, Q.C. :—May it please your Lordship ; Gentlemen of
the Jury ;—I appear on behalf of a member of my own profession,—
a gentleman of rank in that profession, who has been for several
years a member of the House of Commons, to complain of a most
scandalous libel which has been published against him by the
defendant, Mr. Butterworth, who, I may say, though the defendant
here, is only the nominal defendant, as being the publisher of the
periodical in which the libel appears. It is a libel published, not in
a letter from one individual to another,—not even in a newspaper,
which (though a newspaper may circulate more extensively than

this periodical) when once read may be, and perhaps generally is, laid aside and its contents forgotten, or at all events not kept to be appealed to,—but published in a periodical well known to every member of the legal profession and to every branch of it—a periodical which has been in existence now for many years, and which is intended to be kept, and is in fact kept, in the library of every lawyer who takes it in, as a permanent record and book of reference for that which is contained in it. It is in such a publication as that that this scandalous libel has been inserted for which Mr. Seymour now comes before you to claim compensation in order to vindicate his character.

Gentlemen, Mr. Butterworth, the well-known law publisher, is the defendant on this record. Who the writer of the article of which Mr. Seymour complains, is, we have been unable to ascertain. If I could name him to you, very likely we might be able to trace the origin of the spirit which is manifested throughout the libel. I am utterly unable, however, to do that. He shelters himself under the name of Mr. Butterworth, who defends this action. But, gentlemen, although I cannot trace out the individual by whom this libel was written, you will be at no loss to see, when I come to read it to you, that it has been penned by some person who, for some reason or other, has a most vindictive feeling towards Mr. Seymour, and that the manifest object of the writer has been to crush Mr. Seymour, if possible, both as regards his professional and political career. The libel attacks him in almost every capacity of life. It sneers at his origin and at his education. Every step in advance which Mr. Seymour has made, whether in professional or political life, has been made the subject of vile imputations against him; and I think that when I come to read the libel to you, you will not entertain the slightest doubt as to what the object of the writer was. Mr. Seymour's object in bringing this action was, that he might have an opportunity, now for the first time, of having the whole of his conduct brought before a jury in order that they might determine whether the charges which have been made against him are true or false. The writer of this article, however, shrinks from justifying it; and now that an action is brought against the defendant for having published it, he has not pleaded the truth of one single charge contained in it, but has merely pleaded that he is not guilty; the consequence of which is, that no issue being raised upon the question whether the charges are true or false, the defendant is not permitted to prove their truth, and I, on the part of Mr. Seymour, am not permitted to prove their falsehood. Mr. Seymour, therefore, is now

in this position, that he will come into the witness-box without your being able to try whether the charges in respect of which this action is brought are true or false ; and all I am permitted to do in this stage of the proceedings is to give you such a history of the circumstances which are referred to in this libel as will enable you to understand the allusions that are there made, and to appreciate the spirit and the animus of the writer.

Now, gentlemen, as I have said, Mr. Seymour is assailed from the beginning to the end of his career ; and therefore I must tell you shortly what Mr. Seymour's history has been. He is the son of a clergyman of eminence in Ireland, (a clergyman of the Established Church,) and a member of one of the oldest families in that country. He is here sneered at as having had little or no education, as being no scholar : I may, therefore, tell you, that Mr. Seymour graduated with honours at the Dublin University, where he obtained several prizes for literary and collegiate productions. He came to England, and was called to the bar of this country in the year 1846. He chose the Northern Circuit ; and in the year 1852 he was elected a Member of Parliament for Sunderland, one of the towns on his own circuit. He was getting at that time into considerable practice. He attended the sessions at Durham, Newcastle-upon-Tyne, and Hull. He became the leading counsel at those sessions, and was in the habit of receiving briefs in prosecutions on the part of the Crown, by the Post Office, and so on ; and, holding that position, he was, in the year 1854, appointed Recorder of Newcastle-upon-Tyne. I mention this because every single step you will find is made use of in this libel to cast the vilest imputations against him. He was appointed, as I have said, Recorder of Newcastle-upon-Tyne in the year 1854 ; and from that time to the present he has held that judicial office. Upon receiving his appointment as Recorder, it became necessary that he should vacate his seat for Sunderland. Upon his doing so, he went down to Sunderland again ;—he failed to be re-elected, but in the year 1859 he put up for the borough of Southampton, for which he was elected, and he sits as one of the Members for that borough to the present day.

Now, gentlemen, as to Mr. Seymour's advancement at the Bar. I have told you that he became the leader of the sessions which he attended on the Northern Circuit. He had become Recorder of the town of Newcastle-upon-Tyne, and was appointed, as the voluntary act of the learned Judges who went the Northern Circuit in the year 1860, Queen's Counsel in the County Palatine of Lancaster. I do not know whether you, gentlemen, are aware that that is a Pala-

minate jurisdiction in which dignities are granted to members of the Bar which are confined to that county, but which are generally considered as stepping-stones to further dignities extending over the whole country. In August, 1860, he was appointed by the senior Judge who went the Northern Circuit, (with the perfect assent of the other Judge,) Queen's Counsel of the County Palatine of Lancaster, and he held that rank until he received his patent as Queen's Counsel for England from the late Lord Chancellor Lord Campbell. He was in Parliament in 1859, when he sat for the borough of Southampton, and having been appointed Queen's Counsel within the County Palatine of Lancaster in August, 1860, he received, in the month of February, 1861, in conjunction with a number of other learned friends of mine belonging to the Northern Circuit, a patent as Queen's Counsel for England. That being made the subject of comment here, I mention it to you as a matter of fact, in order that you may see the meaning and the animus of the writer in referring to it. I believe I may say, without disparagement to any one of my learned friends who received the rank of Queen's Counsel at the same time as Mr. Seymour, that his practice at the bar at that period as completely justified that appointment being conferred upon him as did that of any others of my learned friends who took rank with him.

Now, gentlemen, shortly after that appointment, Mr. Seymour received an intimation from the Benchers of the Middle Temple, (to which Inn he belonged,) that certain charges had been made against him which they desired he should appear before them to answer. I make no complaint of that honourable body for the course they took in summoning Mr. Seymour to appear before them; but it was certainly most unfortunate that the charges which were then for the first time presented against Mr. Seymour, should not have been brought forward until after he had received from the late Lord Chancellor, Lord Campbell, the appointment of Queen's Counsel; and probably you will be surprised to hear that he was then, for the first time, called upon to answer, not for any professional misconduct (with the exception of one matter which I will speak of presently), but for conduct in other relations of life, eight years, seven years, and, the most recent, six years ago.

Now I have said, I do not know who the writer of this article is, neither do I know how much, if anything, the writer of it had to do with the charges which were brought before the Benchers of the Middle Temple against Mr. Seymour; but this I do know,

that those charges must have been known to whoever brought them forward, years before; and it is most unjust as well as most unfortunate that so long a period should have been permitted to elapse before making imputations such as these against the character of a professional man. These charges were not made until after Mr. Seymour had obtained promotion in his profession; and when he was called upon to answer them, several witnesses were dead, papers had been destroyed, and his means of exculpation were thereby diminished. Supposing a person were indicted now in a criminal court for an offence alleged to have been committed eight years ago, he having been living among us ever since without anything of the kind having been imputed to him; would there not be a public outcry that it was a most unjust thing after so long a lapse of time to call upon him to vindicate himself from such a charge? However, so it was. Mr. Seymour was called on to answer certain matters which were alleged to have occurred years and years ago; and, as I have said, they were not matters relating to his professional character at all. Mr. Seymour unhappily, like many other persons in their foolish giddy days, became connected at one period of his life with joint-stock companies; and the charges which were brought against him were charges in connexion with one of them, and had nothing whatever to do with his professional character, with the single exception I will mention presently. He was summoned to appear before the Benchers; he attended, and the charges which had been made against him were investigated. That investigation occupied a very considerable time, and in the course of the inquiry it turned out (and this is the one exception to which I have just referred, for this did relate to him in his professional capacity) that at one period, several years before, Mr. Seymour, having got into difficulties and into debt, had become, as the result of his speculation in shares in joint-stock companies, the debtor of a solicitor; the solicitor had applied to him for payment, and Mr. Seymour, being unable to pay, had offered, as the only means by which he could discharge the pecuniary obligation he was under, to return whatever fees should come to him from that solicitor's office. I do not for one moment mean to say that that is not unprofessional conduct. No doubt the proper etiquette of our profession forbids it; but this I do say, that it was the only mode in which payment could be made by Mr. Seymour, and, say what you will about its being a violation of professional usage, (and I admit it is so,—do not suppose

that I mean to justify it for a moment,) it is not a ground for any imputation against the moral character of a professional man.

Now the hearings went on for a considerable period. During this time, indeed before this time, probably as the result of his unhappy connexion with joint-stock companies, (though no shareholder ever complained,) vague and misty rumours, not taking any specific form, got abroad; and while the investigation was going on before the Benchers, it was industriously circulated among Mr. Seymour's constituents at Southampton that their representative was the subject of very grave and serious charges before the Benchers of his own Inn. Now, the human mind is so constituted that if some vague wild rumour is circulated to the disparagement of any individual, and if that goes on for any length of time, people get to believe that something very bad must have occurred; and their minds become in such a condition as to make them scarcely able properly to adjudicate upon it. The investigation went on, as I have told you, for a considerable time; and in the result the Benchers of the Middle Temple came to the conclusion, that the charges which had been made against Mr. Seymour had not been proved, with the exception of the one I have mentioned, (which he himself admitted so far as it was a charge,) namely, that he had written to a solicitor by whom he had been pressed for the payment of a debt, stating that he could not pay him, but that he was willing to return him any fees he might receive from him. As to the other charges, the Benchers came to the conclusion that they had not been proved against him; but they thought fit at the same time to append to their judgment a rebuke or reproof for what Mr. Seymour had done six, seven, and eight years before, which the writer of this article has made the occasion of the malignant effusion I am going to read to you. Before I read it, however, let me come to an end of the history I have been giving you, in order that you may understand every word of what is written here. Mr. Seymour went down to his constituents at Southampton shortly after the decision of the Benchers, and on his arrival there he found that not only had information reached some of his opponents of what the decision of the Benchers had been, but, by some means or other, information had reached them not only as to the names of the Benchers who had voted, but how they had voted; and it was industriously circulated through the town that Mr. Seymour had been convicted. They had taken the reproof which the Benchers had thought fit to administer, as a verdict of guilty; and when Mr. Seymour went down to Southampton to meet

his constituents, he found the town placarded with insinuations which were put forward by an anonymous and disappointed elector ; and he was challenged at a public meeting to state whether or not he had been convicted by the Benchers of the Middle Temple of the charges which had been made against him. Of course, considering the state of mind in which Mr. Seymour was at that time, it would be hardly fair to measure with nice precision the words that he then used. He had, at that time, undergone the most trying ordeal to which any man in our profession can be subjected ; he felt the injustice of these old charges being raked up against him at the very time when promotion had been accorded to him by the Lord Chancellor ; he felt hurt by the reproof which the Benchers had thought fit to administer to him in the same breath in which they said that the charges against him had not been proved, and he felt hurt and indignant that information should have reached his opponents at Southampton which he himself had never obtained, and that the town should be placarded with insinuations against him ; and on that occasion he made an address to his constituents which the writer of this libel has taken occasion to criticise in a way you will presently hear.

Now, gentlemen, this is an outline of the circumstances relating to Mr. Seymour to which the libel points. It was necessary that you should know them because you would not otherwise have been able to understand the allusions that are here made ; and now let me read to you the article of which Mr. Seymour complains, and then ask you to judge for yourselves whether it is a fair and legitimate comment on matters of public notoriety, (which I suppose my friend will be instructed to contend it is,) or whether it is not a malignant and studied attack on the whole of Mr. Seymour's private and professional life for the purpose of crushing him. I am not here, gentlemen, to say one word against the liberty of the press. This action is brought with no such object. I think we have scarcely a greater social right than the right of free discussion in the press ; but, at the same time, I believe it to be necessary to the maintenance of that right, that it should be carefully guarded and kept within its proper limits. I quite admit that you may discuss in a newspaper the public conduct of every public man, from the highest subject in the realm down to the lowest official. Every man's public acts are open to public criticism. A Member of Parliament may be criticised for his public conduct ; you and I, for what we do at this moment and in this cause, may very properly be criticised by the press ; but the press must take care not to go beyond that. If

you go beyond a man's public conduct, and impute corrupt motives to him; if you attack him in his private relations of life, you then abuse the liberty of the press, and become liable to an action or to an indictment for a libel. If the writer of this article had contented himself with a mere criticism of Mr. Seymour's conduct in Parliament or at the Bar, however severely he might have dealt with him, it could not have been made the subject of an action if what he wrote had been written *bonâ fide*. Again, if the writer of this article had criticised anything that Mr. Seymour had published to the world, he would have been at perfect liberty to do so, but you cannot and you ought not to make a man's public or professional conduct a peg on which to hang charges, which otherwise you would not be at liberty to make. The moment you go beyond what a man does in public and attack his motives, you go beyond that liberty which the law accords to you.

Now, gentlemen, let me ask you, on reading to you the article of which Mr. Seymour complains, whether the writer of it can be said to be merely commenting on anything that Mr. Seymour had done in public, or whether it is not manifest that he intended from first to last to take occasion from what had been done, and what had been rumoured, to carry out the purpose which he had in his mind—a purpose to ruin and crush Mr. Seymour. Whatever rumours may be in circulation against an individual, rumours which take no specific shape, no man has a right to embody or condense and put them into print. No man is justified in charging another with any specific fraud or wrong because rumours of fraud and wrong may be in circulation. This writer, however, has so done. He is a man who, I suppose like all the rest of us, had heard that something had been said against Mr. Seymour, and he chose to assume all he had heard to be true, and put it into an indictment in the form of a letter attacking Mr. Seymour socially, politically, and professionally.

Let me now call your attention to the passages of which Mr. Seymour justly complains, and in fairness to the writer I will read you every word of the article from beginning to end. You will find that it is prefaced by general statements, of which, if they had stood alone, nobody could complain; but he has obviously done so for the purpose of preparing the mind of the reader to receive as truth the specific charges which he intends to bring against Mr. Seymour. The libel is contained in the *LAW MAGAZINE AND LAW REVIEW* for May, 1862. The *LAW MAGAZINE AND LAW REVIEW* is a periodical which comes out quarterly: it has been in existence for

very many years, and may be found in the library of almost every lawyer. The article is headed

"WILLIAM DIGBY SEYMOUR, Q.C., M.P.—It cannot be denied, that the scandals which have lately been afloat concerning more than one well-known member of the Bar, have shaken the public opinion, hitherto prevalent, in the honour and high tone of the profession. Scarcely had Mr. Edwin James vanished from the scene, when two other learned gentlemen, one of whom is a scholar and a genius, and the other, though neither of these, still a barrister in some practice, and lately elevated to the rank of Queen's Counsel, became the subjects of a notoriety, painful to themselves and discreditable to the whole profession."

The allusion which is here made cannot be misunderstood. After mentioning one name, (that of Mr. Edwin James,) another person is referred to, who is said to be a scholar and a genius, and there can be no doubt whatever that the words "And the other, though neither of these, still a barrister in some practice, and lately elevated to the rank of Queen's Counsel," are intended to apply to Mr. Seymour, who is here described as being "neither a scholar nor a genius."

"Such frequent evidence of something rotten in our state, has naturally caused inquiry as to the constitution of the learned bodies who are supposed to watch over the morality of the profession, and into the laws and customs which regulate the conduct of the Bar towards the public and each other. We will frankly say that, in our opinion, the assertion commonly made as to the deterioration of the Bar, though often exaggerated, is not without foundation, and we believe that several causes, for some time in operation, have combined to produce this result. The increased laxity of admission to the Bar, which has made the degree ridiculous as any test of learning or respectability, is unquestionably one of them; and the rapid creation of a number of second-rate public offices, tenable only by barristers of a few years' standing, is another. The patronage now dispensed among the Bar, and chiefly, we are sorry to say, by favouritism and family influence, is enormous, and so far from being any real advantage to the profession, is becoming its curse. The Bar is flooded by a race of place-hunters, ignorant of law and careless of practice, whose merit rests on a certain seniority in the Law List, and their prospects on the hope of patronage. It would be idle to expect from such men any high appreciation of the true dignity and duty of the Bar, or any veneration for its traditionary usages. They are mere birds of passage, using the degree which they have obtained as the stepping-stone to their real vocation in life—an obscure but comfortable office. We do not say that these members of the Bar, now so numerous, are necessarily wanting in honour or morality; such a sweeping censure

would be foolish and unjust, for doubtless there are many honourable men to be found amongst them; but, as a rule, we cannot entertain a doubt that the standard of all those feelings which go to the composition of a high-minded gentleman, is lower among the men who seek for place than among those who, free of obligation to others, earn their bread by an independent profession. But there is still another evil influence at work, to which we allude with hesitation, seeing the delicacy of a subject which is in some degree foreign to our province; we mean the relations that have grown up between the Bar and the House of Commons. In former times, when the difficulties of finding a seat in Parliament (except for the fortunate nominees to pocket boroughs) were much greater than at present, a barrister, as such, seldom entered the House, unless he were a candidate for a high legal office, or was capable of taking the post of a leading lawyer in the Opposition. In those days, the representatives of the Bar were few in the Commons, but they were nearly always able and eminent men, whose legitimate ambition was fixed on the higher prizes of the profession. The House still contains such men, and the Bar has still reason to be proud of such representatives; but they now form only a small proportion of the total number of barristers in Parliament. Since the passing of the Reform Act threw open a number of popular constituencies, the array of 'gentlemen of the long robe' in the House has largely increased, and we believe that at the present moment upwards of seventy of the Bar have added the cares of legislation to their labours in practice. Whether these legal gentlemen make the best representatives is a question on which we do not enter; the fact that they are returned by free and intelligent electors constitutes a presumption that they do so; it is their influence on the *morale* of the Bar with which we have to deal. Now, as it is certain that the great majority of the Sanhedrim we have alluded to can never become Solicitors-General or Puisne Judges, it follows that the current price of a barrister's parliamentary support has fallen terribly of late years. The glut in the market has seriously diminished the value of the article. In bygone days, we may presume that a counsel who had obtained a seat in the House, yielded his political virtue to nothing less than a descent by the Jupiter of the Treasury in a golden shower of judicial dignity, or a law officer's emoluments; but now-a-days, votes are won and a too demonstrative independence is wooed away by the humbler agency of silk gowns, second-class recorderships, and even the obscure counselships to Government offices."

Nobody would have a right to complain of this, but you will see that the writer is now feathering the arrow which he means to point at Mr. Seymour.

"What effect this new development of patronage may have on a House which professes to be jealous of any official encroachment on

its independence, we do not care to inquire, though, considering the number of junior barristers in Parliament, and the startling amount of places that may now be brought to bear upon their votes, the subject may be not unworthy of consideration by those interested in the purity of our constitution. But viewing the question as relates to the Bar, we have no hesitation in saying, that the practice at present pursued of using the House of Commons as a stepping-stone to inferior places in the profession, is fraught with evil. Hardworking and worthy practitioners, who may not have either the means or the inclination to enter Parliament, see themselves continually passed over by far inferior men, whose claims to promotion have originated in the division lobby; speculative adventurous juniors, who are not rising so fast as they fancy that their merits deserve, or whose characters require some fresh varnish, are tempted to make a bold dash at a constituency, and to prop up their professional fortunes by parliamentary interest. The moral tone of the Bar is lowered by spectacles of successful impudence, no doubt occasionally ending in some terrible and damning crash, but not the less demoralizing in their temporary glitter as they are degrading in their final infamy."

Gentlemen, the writer having now prepared us for what he is going to say about Mr. Seymour, proceeds to apply the general observations he has made, in the propriety of some of which many of us probably would go along with him, to a certain extent. He says:—

"We have prefaced the special subject of our article with these observations, because we believe that they are needed at the present moment, unpalatable and little flattering as they may be. The Bar will be lost in public estimation if scandals are to increase without any effort being made on the part of the profession to rid themselves of the generating causes, and when we are entering on a history which must be a subject of humiliation to every man of honour amongst us," (that is the history of Mr. Seymour,) "it is well to state plainly that some, at least, of the moral evils afflicting the Bar are capable of removal by the exercise of professional opinion on the distribution of place and precedence. Nothing short of the abolition of human nature could save the Bar from occasional disgrace by unworthy members; nothing can prevent, or indeed ought to prevent, an unscrupulous man obtaining notoriety; for notoriety, while it gratifies his miserable ambition, is sure to bring his appropriate punishment—but a more wholesome discipline, and a more upright system of promotion and patronage, would at least leave dishonour to its own devices, without compromising the lustre of the profession, or staining the sanctity of the Crown." Then he says, "we will now turn to the gentlemen whose career has lately attracted so much attention," (that is the history which they say "must be a subject of humiliation

to every man of honour among us"). "Mr. William Digby Seymour was called to the bar in 1846, and has since practised on the Northern Circuit. He has lately informed his constituents that he was born an Irishman; but we should have thought this information, to any one even slightly acquainted with the honourable member, was altogether superfluous. He likewise attributes to his nationality the bitter hostility with which, as he alleges, he was at first received, and has since been maligned and persecuted, by his brethren on the Northern Circuit. He came among us, as he says, with 'the curse of Swift' upon him, and gives us to understand that nothing but his unrivalled genius and purity of character could have enabled him to survive and triumph over this natal calamity;" (you observe the irony that runs through the whole of this;) "whatever credence we may wish to attach to every statement conveyed in the mild and measured language of Mr. Seymour, we must take exception to the idea that Irish birth constitutes disqualification for professional popularity or success. An eminent Englishman, himself an ornament to his Alma Mater, when recently comparing in a public address the achievements of the various Universities in the United Kingdom, paid a high compliment to Trinity College, Dublin: and as a proof of the rare training given at that seat of learning, he adduced, among other instances, the fact that no less than five out of the fifteen Judges occupying the Bench had received their education in that famous University of Ireland. We believe that only four of the five are Hibernian by birth; but so large a proportion of Irishmen in the highest judicial position, and the well-earned success of many others from our sister island in the ranks of the Bar, are proof enough that the career of the profession is fair and open to all the Queen's subjects. But it is only just to Mr. Digby Seymour to admit that there are two kinds of Irishmen, and that the cordiality extended to the one is by no means secure to the other."

Observe under which class he places Mr. Seymour. Having already hinted, "It is not because you are an Irishman that you have not met with the reception which you say you ought to have had: it must have been something else;" you will see, when he comes to classify the Irishmen, under which class he places Mr. Seymour. He says:

"There is the Irish gentleman, generous, accomplished, and urbane—perhaps the highest type of the genus gentleman to be found in the United Kingdom. There is also the Irish blackguard, swaggering, foul-mouthed, and shameless: the most insolent of upstarts, the most unblushing of swindlers: never destitute of a quarrel, never at a loss for a lie. For as the Irish gentleman is of rare quality, so the Irish blackguard is consummate in his growth. Ireland is always great in extremes, more especially in her psychological productions. She has reared generals who have led their

armies to certain victories; and she has reared also the tribe of cabbage-garden heroes. She has adorned our Parliament with splendid orators and consummate statesmen, and has afflicted it also with a breed of bawling demagogues and venal fools. And so it happens that this green and prolific island, with the singular versatility of her race, has supplied to the Bar of England some of its brightest ornaments, and some of its blackest sheep; bestowing on the former a learning and eloquence which Englishmen are proud to admire, and enriching the latter with a power of impudence and a fertility in fraud which defy all description, as (to the uninitiated intellect) they pass all knowledge. Should one of this latter find his way to an English Circuit, it could hardly be considered a matter for legitimate surprise if he should become an object of suspicion and dislike, and *hic niger est* be the motto coupled with his name."

Does my friend mean to contend to-day that that is not intended by the writer of this libel to be applied to Mr. Seymour? The defendant has pleaded not guilty. Does he mean to say, "I did not mean that to apply to Mr. Seymour?" The application of it in the last sentence is perfect. After describing the one class, the other is described as "The Irish blackguard, swaggering, foul-mouthed, and shameless: the most insolent of upstarts, the most unblushing of swindlers." "The blackest sheep of the English Bar." "Enriched with a power of impudence and a fertility in fraud which defy all description." That is the description which is given of Mr. Seymour by the writer of this libel. You see now that all that had been said before was merely preparatory to bringing down this battery upon him; and here he is charged in the coarsest and broadest terms, not only with being "a blackguard, swaggering, foul-mouthed, and shameless," but as being "the most insolent of upstarts, the most unblushing of swindlers," possessed of a "power of impudence and a fertility in fraud which defy all description." That is the description which is here given of Mr. Seymour by the writer of this article, who, when he is brought into this Court and challenged to justify what he has said, declines to assert that any one single assertion he has made is true. Then he goes on to the details, and he says:

"But to return. Mr. Digby Seymour, whether received on the Northern Circuit with dislike and hostility, as he himself asserts, or with the ordinary courtesy and fairness exhibited by the Bar to new comers, as we prefer to believe, persevered in the profession he had chosen, and succeeded in obtaining a moderate share of practice. It is generally affirmed, indeed, that he was assisted to the latter by an agreement of a peculiar nature entered into with his father-in-law, who, at the time of Mr. Seymour's

marriage, was a solicitor in considerable practice; but we are unaware whether the rumour rests on any sufficient authority, and considering the subsequent pecuniary misfortune of his father-in-law, we should apprehend that the greatest service rendered to Mr. Digby Seymour by that relative was his return to Parliament for the borough of Sunderland, in conjunction with Mr. George Hudson, in the year 1852."

There again, if the writer had only condescended to assert that that was true, or that one word of it was true, I should have had the opportunity of proving whether it was true or not. I have told you that Mr. Seymour was in considerable practice before he knew that part at all; and he owed nothing whatever to the relationship which the writer has assumed to exist. He says:

"We never were able to discover that Mr. Digby Seymour, during his first sojourn in the House of Commons, added in any appreciable degree either to the usefulness or the brilliance of that assembly; we are not aware that any measure was secured by his exertions, or any principle elucidated by his oratory, or any party at all benefited by his adherence, save in the matter of his vote. For this last he was rewarded with the Recordership of Newcastle, to the just dissatisfaction of the Bar, who thought that better men had been passed over for an unworthy political motive."

I have told you that that appointment was made in 1854, at a time when Mr. Seymour was the leader of the sessions in those counties, and a person to whom, in the natural order, it would come. At the time when Mr. Seymour gave his vote in the House of Commons, the Recordership of Newcastle was not vacant—nobody dreamed that it would be vacant—and the vote which Mr. Seymour gave, therefore, could have had nothing to do with it. There is this note appended to the last passage I read:

"We observe that in his speech at Southampton, Mr. Digby Seymour instances his elevation to the Recordership of Newcastle as a proof of his *professional* success. We believe that Sir George Hayter could, if he were so minded, tell a different tale."

I say again, if there had been the least foundation for believing that there was any truth in the statement here made, Sir George Hayter could have answered the matter. Do they know, or do they not know, that Sir George Hayter has answered it? At all events, they might have pleaded that their statement was true, and they might have called Sir George Hayter to prove it. Then the writer goes on:

"It may, perhaps, be surmised that the appointment was dictated by a more intimate knowledge of the mood of the electors of Sun-

derland than the general public possessed ; for on vacating his seat, as he was compelled by law to do on acceptance of the office, and offering himself for re-election, Mr. Digby Seymour was defeated, and ousted for the time from political life. From that date till his return for Southampton, nothing noticeable is recorded of him, unless it be an undignified squabble, when sitting in his judicial capacity, with the Bar of the Newcastle Sessions. But it is only right to say that, on this occasion, Mr. Seymour was not solely in the wrong, and the incident is only worth alluding to as a curious example of that fatality for hot water which is this gentleman's habitual and unhappy characteristic."

I say that this passage and passages like this show what the animus of the writer is. Even when he is compelled to say a word in favour of Mr. Seymour, he cannot help adding something which will mar the whole effect of it.

"When Lord Derby dissolved Parliament in 1859, and it became evident from day to day that his adherents were gaining on the hustings, a curious phenomenon suddenly exhibited itself in political life. A number of gentlemen who up to that time had been distinguished, if they had any distinction at all, for their pronounced radical opinions, made the discovery that their political aims would be best served by a temporary transfer of support to their opponents, and that the surest way to provide for the triumph of liberal principles was to secure a conservative ministry in power. One of the converts to this new light, on the orthodoxy of which we pronounce no opinion, was the ex-member for Sunderland ; and we accordingly find him soliciting the votes of the electors of Southampton on the double ground of his professed liberal principles and his promised conservative votes. So happy a combination obtained, as it deserved, success ; and by the influence of a discontented section of one party, and through the confident (as it turned out, too confident) trust of the other, Mr. Digby Seymour was reinstated in the House."

Now observe this :

"It was, of course, anticipated by all who did not know him well, that he would keep to his hustings' agreement, and vote for Lord Derby's continuance in power ; those who *did* know him well were by no means surprised to find his name in the division list with the successful liberal party, when Lord John Russell brought on the motion that proved fatal to the conservative ministry. Mr. Seymour, with some others who had pursued a similar course, became the object of pungent observation in the conservative newspapers, which were just then employed in a chorus of reclamation at the factious conduct of the liberals. We confess that we have little sympathy for either complaint. A dissolution had been tried, many seats had been lost and won, and the opposition had a perfect right to try a fall with their antagonists at the earliest opportunity :

while as to the defection of the neutrals who had been helped into their seats by conservative support, the nature of the bargain precludes pity or condolence. On what principle is it reckoned, that because a man is faithless to his own party he will be true to another? On what security is that pledge taken, of which the absence of honour is an essential quality? *Caveat emptor* is a maxim salutary in all contracts, and the rawest emissary of the Carlton should know what manner of men they be for whom he angles in the muddy pools of a mercenary radicalism. The worst evil attending a weak Government is the necessity under which it labours to catch every possible vote in any quarter, and its besetting sin is an improper distribution of patronage. Lord Palmerston's present administration has probably never numbered a working majority of twenty trustworthy votes in the House of Commons, and the political circumstances of the time have tended to diminish the ranks of ministerial supporters. It probably became necessary to secure every doubtful adherent, and this consideration may palliate, but cannot excuse, the promotion of Mr. Digby Seymour to the rank of Queen's Counsel."

What is broadly insinuated here is, that Mr. Seymour purchased that rank which was given to him by the late Lord Chancellor, Lord Campbell, by the prostitution of his votes in the House of Commons.

"Even at the time of the appointment rumours were afloat in the profession that his conduct must form the subject of investigation by the Benchers of the Middle Temple; and we have heard that Lord Campbell, shortly before his death, expressed his deep regret that he had been ever led by political pressure to promise a silk gown to the member for Southampton."

Here again, if there was one syllable of truth in the statement that is made, it might have been proved. The fact is, that Mr. Seymour had happened to introduce a Bill into Parliament in that very session, the object of which was the amendment of the Court of Admiralty. The late Lord Chancellor was about to introduce a Bill for the same purpose himself. Mr. Seymour had passed his Bill through the House of Commons, and Lord Campbell was so pleased with it, that he took charge of it in the House of Lords, and within a week of that time he wrote to Mr. Seymour a letter, stating that he had made up his mind to recommend Her Majesty to give him a silk gown. The writer of this libel having said, "We have heard that Lord Campbell, shortly before his death, expressed his deep regret, that he had been ever led by political pressure to promise a silk gown to the member for Southampton," goes on to say, "if this be so, it furnishes a curious commentary on one portion of Mr. Seymour's speech at Southampton, in which he quotes the patronage of Lord

Campbell as a proof of the purity of his professional career. It is an extraordinary, and we believe an unprecedented fact, that a barrister should be arraigned before the Benchers of his Inn for improper conduct at the very time when the Crown has been induced to raise him to the superior rank of the profession. Yet this, we understand from his own lips, was the case with Mr. Digby Seymour; and the language employed by the Benchers in their judgment, forbids us to hope that the inquiry before them was either unjust or uncalled for. We are precluded, in common with the rest of the public, from ascertaining the exact nature of the evidence adduced against Mr. Seymour; and we conceive that the Bench of the Middle Temple have acted unfairly towards the Bar, as well as unwisely as respects themselves, in withholding a full report of the accusation and the proceedings thereon. That any injustice, however, can have been done by this silence, to the accused, we can hardly bring ourselves to believe; for, inasmuch as Mr. Digby Seymour is in possession of the whole evidence, and could give us the benefit of a total disclosure of all the circumstances of his trial, thereby putting himself right with the public—if the facts admit of his doing so—and as, notwithstanding occasional promises of such a disclosure, he remains silent, the only reasonable conclusion at which we can arrive is, that he does not consider the publication of the whole truth likely to improve his position. All we can do, under these circumstances, is to place before our readers, at one view, the various documents that have been made public on the matter, and to collect, as far as possible, the scattered gleams of light that have fallen, from time to time, on the dark shadows of this remarkable case. We will only premise in doing so, that whatever publicity the scandal may now have attained, is owing to Mr. Digby Seymour himself, as the Benchers had maintained an absolute silence up to the time when his speech to his constituents, on the 4th February last, was reported in the *Times* newspaper. This speech was delivered at a public meeting, called, we believe, at the instance of Mr. Seymour himself; but, provoked, according to his account, by the sinister rumours afloat concerning him, and more especially by a placard with which the walls of Southampton had been covered, and which was signed by a ‘disappointed elector,’ the type, we should imagine, of a somewhat numerous class in that flourishing borough. It is only fair to Mr. Digby Seymour to give verbatim that portion of his speech which relates more particularly to his trial before the Benchers.”

Then there is set forth in the article, the speech which, as I have told you, Mr. Seymour made when he went down to Southampton after the Benchers had given their verdict, and when he found the town placarded in the way I have mentioned. Perhaps my lord will allow my friend Mr. Keane to read it.

LORD CHIEF JUSTICE COCKBURN :—Certainly.

MR. KEANE :—“ I have been asked whether certain charges were not made against me affecting my honour as a gentleman and as a professional man—whether those charges were not such as, had they been proved, would have insured my being disbarred—whether the result was communicated to me in writing—and whether, as affecting the honour of a gentleman representing the town and county of Southampton, I am prepared to give a copy of the decision to the constituency, or to publish it in some manner calculated to allow every one connected with the town to see it. Now, I answer to the questions of my anonymous interrogator, that the printed evidence of everything which took place during an eight months’ investigation with closed doors, is open for his inspection, or for the gratification of his curiosity, at any hour or place he chooses to appoint. But I will also say this, that if he expects me upon this platform to-night, to endeavour in the compass of a few minutes to go over that which occupied so long a time—to parade before you, who could not without a full hearing, and without due consideration, judge of their merits, the details of this protracted inquiry—and to ask you to sit as a Court of Appeal upon the judges who were appointed to conduct it, then I say, I have not come to Southampton to submit to such conditions. Gentlemen, I have now been nearly sixteen years at the Bar. I never won a laurel, and never obtained a promotion, without a severe and arduous struggle. I came among the members of the Northern Circuit with that misfortune which my countryman, Grattan, has described. I came ‘with the curse of Swift upon me.’ I was an Irishman. I was made, from my earliest time, the mark of a cruel and jealous opposition, and a determined effort to keep me down if it were possible. But, gentlemen, their efforts failed. Step by step I vanquished one difficulty and another, and won by degrees the honours which I have received, and the dignities which I hold. I obtained a lead at my sessions. I obtained the best Recordership but one on the Northern Circuit. I obtained my rank a short time ago from two Judges, themselves formerly members of the Northern Circuit, of Palatine precedence at Liverpool; and finally, notwithstanding all my traducers—ay, and at the very time when detraction was doing its worst, I received the rank of Her Majesty’s Counsel, from the hands of the late Lord Chancellor Campbell. Gentlemen, I will tell you the high crimes and misdemeanours which formed the principal points of the recent inquiry. It was my misfortune, or, if my interrogator likes, it was my fault and error in judgment, to accept, many years ago, the chair of a company, and connect myself, more or less, with commercial speculations in London. Gentlemen, the charges, as they are called, which were brought against me, arose out of matters, the youngest of which is seven years old, and others dated back actually to ten years ago. The men who instigated these charges never

showed their faces—my real accusers never appeared, but, beginning with the efforts of a few individuals on my own Circuit, scandals were whispered about, which at last, by some means or other, which I have not been able as yet to detect or expose, led to the investigation by the Benchers of my Inn. Those charges arose out of these bygone and past transactions, and they who alone, if the charges were true, had a right or title to complain, were no parties to the institution of the inquiry. Gentlemen, without going into detail, I tell you this, that foot by foot, and inch by inch, I disputed the ground with my assailants. I was, upon fifteen different occasions, before the Benchers of my Inn, and I stood practically before fifteen different tribunals, because upon no two occasions were my judges the same. The examinations were conducted within closed doors. I would to God they had been conducted in the broad light of day, and before the face of my constituents and the country; they were conducted by men sitting down after dinner, varying in their numbers and attendance, and sometimes postponing the inquiry upon the most trivial grounds. But, gentlemen, whatever feelings were entertained towards me originally, there were many among those Benchers, who, I believe, were men of the highest honour, imbued with the spirit of justice, and actuated by feelings of generosity; and to them mainly, and to their indignation at the monstrous wrongs which I was enduring, I believe I owe at last the verdict which even my interrogator will not deny has been given in my favour. Gentlemen, I do sincerely hope that that public which claimed for a supposed lunatic the other day a public examination as to his mental capacity—I hope that public will declare, sooner or later, that a man holding my rank should not be tried in the dark, by a tribunal constituted like that before which I have appeared, upon any charges affecting his professional conduct or his private character. Gentlemen, I have now only in conclusion, to tell my ‘disappointed’ querist, that I have no objection on earth, if it pleases those who were my judges, to the publication to the world of everything which took place before them. I refer my ‘disappointed elector’ to those Benchers whom he has had the impertinence to name; and I believe, if he makes inquiry with the idea that he will gain any material to damage my character, he will come away a doubly disappointed elector. No, gentlemen, if the truth must be told, mine is a hard lot. When men had ceased to strike at my political character—when men had ceased to disown my professional claims, they have dared to assail my private honour; but, as I conquered the former, so I have succeeded in discomfiting the latter; and I tell this ‘disappointed’ one in particular, that if he will dare to show his front, and utter in plain language those slanders which he has dared to insinuate, I shall make him responsible before twelve men in a jury-box. Now, gentlemen, I have done; I have gone over the various points, which, fairly or unfairly, have been pressed upon your attention, and upon which

I have come down, though late, to Southampton, in the honest hope that I might receive from you a verdict such as would tell at once to the public that whatever cruelty I have encountered elsewhere—however the dirty fingers of certain members of my own profession have been employed in raking up the scandals of the past for the purpose of dragging up something to damage my repute, yet that you sympathised with your representative—that you accepted the result—that you saw me still the member of an honourable profession, in spite of malice, and jealousy, and of political hate—still holding the rank which by such hard struggles I attained, and that you would, by your determination and by your pronounced opinion to-night, trample for ever upon this cruel attempt to call public attention to a matter which, hitherto at least, has been confined to a more limited circle, and has never yet been brought forth and laid before the glare of public day.”

MR. LUSH:—That, gentlemen, is the speech they quote, which was made by Mr. Seymour at Southampton. The libel then goes on to say :

“If this speech took the public by surprise, it was read by the Bar and the Benchers, though on different grounds, with considerable astonishment. The Bar were amused to find that the promotion of Mr. Digby Seymour, first to the Recordership of Newcastle, and then to the rank of Queen’s Counsel, could be quoted as any approval of his professional character, when the favour shown him was notoriously the result of negotiations in the division lobby.”

What is that but a direct charge of corruption as a Member of Parliament? What is it but saying, “You have bartered your votes in the division lobby, and by reason of that you have obtained your two appointments”? I have already told you that the first he obtained in the regular course, when he was in such a position as fairly entitled him to it, and his vote was given before any vacancy in the Recordership was known or even thought of, in favour of the Ministry; and the second appointment was conferred upon him in company with many others of my learned friends, and I may say, without disparagement to those gentlemen, that Mr. Seymour was as much entitled by his practice to that distinction, as any of them were.

“But the Benchers of the Middle Temple were still more amazed to read in the columns of the *Times* that their treatment of Mr. Seymour had been either unjust in itself, or could form the ground of complaint on his part, still less that there was any obstacle to his publication of evidence printed at length, forwarded to him by their direction, and at the time of his speech lying in his chambers.”

Did the writer of this article know that Mr. Seymour had pub-

lished an account of this evidence, but dare not circulate it publicly because other gentlemen, whose names were referred to in it, had given him notice not to do so, though that notice has since been withdrawn?

“Moreover, the professions of gratitude, tearful we are told, if not abject in their nature, with which Mr. Seymour had received the intimation of the Bench that they had taken a merciful view of his case, and would censure, without disbaring him, formed a strange contrast to the loud challenge and fierce denunciations with which he alluded to his trial at Southampton.”

The writer puts that in here, when he has in his hand at the same moment that which he puts into a subsequent part of the libel, Mr. Seymour's protest to the Benchers against what they had done; although he has that in his hand at the time, he represents Mr. Seymour's professions of gratitude to have been “tearful, if not abject in their nature.”

LORD CHIEF JUSTICE COCKBURN:—I can understand that, prior to an intimation being given to Mr. Seymour that the sentence of the Benchers is to be limited to censure, he expresses his gratitude; and afterwards, when the sentence is pronounced, that is followed by a protest.

MR. LUSH:—Yes, my lord; that is what is meant. Then the writer goes on to say:

“In order to set the public right on one of these points, at any rate, the Under-Treasurer of the Inn was directed to forward the subjoined letter to the Editor of the *Times*, by whom it was published on Saturday the 22nd February. ‘Sir,—I am directed by the Masters of the Bench of the Middle Temple to inform you that a copy of the Judgment of the Benchers in Mr. Digby Seymour's case, and copies of the evidence and proceedings on which it was founded, were furnished to Mr. Digby Seymour by the Benchers before Mr. Digby Seymour made his address to his constituents at Southampton. I am, Sir, your obedient Servant, T. H. Dakyns, Under-Treasurer. Treasury Office, Middle Temple, Feb. 21.’”

Mr. Seymour says to his constituents: “I tell the disappointed elector that, if he will come to my chambers, he may see the whole of the evidence at any time.” But then they say, Mr. Seymour ought to have published it. His answer to that is: “I had notice from persons whose names are mentioned in the proceedings, not to publish; but the evidence is now at my chambers, and if you choose to come there and see it, you may read every line of it.” The writer of this article, however, makes it appear that Mr. Seymour

had denied that he had it; and then, on the 24th, this letter was written by Mr. Seymour to the Editor of the *Times*, to contradict that false impression.

"Sir,—With reference to a letter in the *Times* of to-day, signed T. Dakyns, and stating that a copy of the proceedings before the Benchers of the Middle Temple was furnished to me before I addressed my constituents at Southampton, I beg to refer you to the report of my speech in your columns, which contains the following paragraph; 'Now, I answer to the questions of my anonymous interrogator, that the printed evidence of everything which took place during an eight months' investigation, with closed doors, is open for his inspection, or for the gratification of his curiosity, at any hour or place he chooses to appoint.'"

Then the writer of this article goes on:

"The above letter, like some others from the pen of Mr. Digby Seymour, curiously avoids the real question at issue. The point is not whether an 'anonymous interrogator' has been offered an inspection of the evidence, but whether Mr. Digby Seymour has not had, for some time past, the means afforded him of giving the fullest publicity to the facts alleged against him, and whether (in spite of his vehement asseverations of injured innocence, and desire for publication) he has not judged it more prudent to keep those facts concealed."

Now, really, after he had said to the people at Southampton, "The evidence is all at my chambers, and you are quite welcome to come and see it at any time you please," to charge him with avoiding the real question at issue, and with having intimated that he had not the means afforded to him of giving the fullest publicity to the facts alleged against him, shows certainly what the animus of this writer is, who will not look with favour on any single act of Mr. Seymour's conduct. Then the writer goes on to say:

"The Benchers, whose whole proceedings in this case have been secretive and dilatory to an unfortunate degree, did not publish their judgment on Mr. Digby Seymour at the time when it was given, being probably swayed by the same merciful considerations as induced them to confine that judgment to a censure of the delinquent; but on the same Saturday on which the letter of their Under-Treasurer was dated, the following judgment was screened in the Middle Temple Hall, where, as we think, it ought to have appeared long before."

Now comes the reproof which the Benchers pronounce:

"The Masters of the Bench have carefully considered the voluminous evidence and documents which have been brought before

them, and have come to the conclusion that the charges in the cases of 'Parker,' 'Coutts,' and 'Robertson,' respectively, are not proved, and that the charge as to a proposal to hold briefs for an attorney, in liquidation of his costs, payable by you, is proved."

Why, gentlemen, Mr. Seymour admitted it; he never denied it.

"The facts and circumstances which are disclosed fully satisfy the Masters of the Bench of the *necessity* for this inquiry, and they regret to add that they cannot accompany their intimation to you of their decision on the three charges first named, with any declaration that your conduct is not liable to censure; on the contrary, they have the painful duty to perform, of stating to you that they find much worthy of severe condemnation, even on the most favourable construction of your actions; that in Parker's case, on your own statement of your conduct, evidence appears of a want of open dealing towards and of concealment from Mr. Parker. Mr. Parker's agreement with you, or your own version of it, was inconsistent with your substitution of your *credit* for the money you undertook to add to his own, and with the use of his money for any purpose unconnected with the printing scheme. The breach of your agreement in these two respects was not communicated to Mr. Parker, whose consent alone could have justified the course to which you actually resorted. The Masters of the Bench are also under the painful necessity of declaring their opinion that the settlement of Mr. Parker's action, while the charges of fraud included in it were, in the opinion of the Bench, not only *not* withdrawn, but were strongly re-asserted, as it was conduct calculated to destroy character by exciting suspicions that charges which were not boldly met could not be gainsayed, was an arrangement to which a right-minded man, even in the hour of heavy pecuniary distress, would not have submitted. They are compelled to add, that no solid ground presents itself on the evidence in justification of the affidavit which was made by you for the purpose of postponing the trial of the action in question. With respect to Captain Robertson's case, there is found in your statements at various times, in relation to that case, a want of consistency which indicates some recklessness of assertion."

You will bear in mind, gentlemen, that Mr. Seymour was called on, seven years after the transaction, to explain what had occurred with reference to a joint-stock company of which he was one of the directors. It was with reference to a matter that would necessarily involve the investigation of a number of books and papers, as to which Mr. Seymour was called on to give an account at that distance of time, that the Benchers said:

"There is found in your statements at various times, in relation to that case, a want of consistency, which indicates some recklessness of assertion. Your assertion, so often repeated, that you had generously

taken upon yourself very large liabilities which did not in any way belong to you, as you assert yourself to have been totally unconnected with, and innocent of, the transaction termed 'rigging the market,' is at variance with the statement in your letter to Mr. Lefroy, that the debt was as much Captain Robertson's as your own. The Masters of the Bench are unable to reconcile an act which, according to your version of it, would have been one of romantic generosity and self-devotion, (scarcely consistent with your duties to others and with the reasonable claims of justice,) with other portions of the evidence, and with the ordinary presumptions which arise from your conduct, as disclosed throughout these painful transactions."

That, gentlemen, is the reproof which the Benchers thought fit to administer to Mr. Seymour in relation to these three charges, the matters to which those charges related not being of a professional, but of a purely mercantile character. Those transactions occurred at a period when Mr. Seymour was comparatively a young man; and at the time when they were investigated by the Benchers, Mr. Seymour had ceased for many years to have anything to do with them. How many men are there, do you think, in middle life, who, if they were called to account for the irregularities of their youth, or the period when they had just arrived at manhood; how many men are there who, if they were called to give a strict account of their conduct in matters which occurred ten years ago, would be able so thoroughly to acquit themselves, as, in the judgment of a purely scrupulous mind, to be entitled to go away free from all blame? Who among us would be able to stand the test of such an investigation of our conduct when in the heyday of youth, or when we first mixed with the excitements of the world?

Then the Benchers go on to the fourth charge, which is a charge that Mr. Seymour had offered to pay a debt due by him to a solicitor, by returning the fees to be received from him. They say :

"The fourth charge relates to a matter of a different character. The Masters of the Bench are glad to find that it is not justified by you; but the grounds on which you attempted to palliate your conduct are not satisfactory to them. Your proposal was one most improper from a barrister to an attorney, and invited a breach of duty on the part of the attorney; a client would never be likely to suspect that his attorney, from secret motives of interest, was selecting an advocate for him whom otherwise he might not have chosen. It is conduct, therefore, promoting deception, and likely to generate suspicion where confidence should prevail. If such a practice were tolerated, it would lower the character and honour of both branches of the profession, and would be injurious to the public, not only by reason of such debasement, but also by its

tendency to introduce into, or maintain in, the practice of their profession, men more distinguished by the pliancy of their principles than by the gifts of nature improved by an industrious and honest pursuit of eminence by honourable means."

Gentlemen, in every word of that I entirely agree ; but again I say that, although it is a matter very proper for the Benchers to observe upon when they are sitting to adjudicate on a man's professional conduct, it is not a matter which entitles one of the public, like the writer of this article, to found upon it the violent and malignant charges he has made. It is very well indeed for men whose duty it is to protect the honour of the profession, and the public, to observe on the impropriety of a step like this, but it is very improper for any one of the public to found upon it such a libel as this; and again I say, that, although wrong it may be, and although wrong it is, looking at it with reference to professional propriety, it is, at all events, an honest transaction.

Then the writer of this libel goes on to say :

"The above judgment appeared at length in the *Times* of the 24th of February, and on the 25th the following letters and protest, forwarded by Mr. Digby Seymour, were published in that Journal."

Mr. KEANE:—This is a letter signed William Digby Seymour, dated "2, Dr. Johnson's Buildings, Temple, February 24th," and addressed to the Editor of the *Times*:

"Sir,—The Benchers of the Middle Temple are pursuing to the last the same course they adopted towards me from the first. They have 'screened,' and published their 'judgment,' but they thought proper to suppress my protest. I appeal to you to supply this significant omission, and request you will publish the documents I enclose. There are other grave matters between myself and the Bench, not detailed in this protest, which the publication of the whole proceedings will reveal to the eyes of the profession and the public. I say of 'the whole proceedings,' because the printed report furnished me is not complete. It does not contain all the 'evidence' and 'proceedings' of the tenth meeting. It does not contain the whole of the documentary evidence put in by myself, or my counsel, Mr. Lush, Q.C. It does not contain the names of the Benchers who voted for or against the various portions of this 'judgment.' This is no longer a case for any half publicity. I am now, by the very act of the Benchers themselves, entitled to have what I demand—the whole truth made known, ungarbled, and unabridged."

Then there is this postscript:

"To obviate the possibility of any misapprehension, I ought to add that, when I offered for inspection, by any interrogator, at

Southampton, 'the printed evidence of everything which took place,' I, of course, meant the printed evidence so far as it had been supplied to me."

There is then a letter addressed by Mr. Seymour on the 3rd of February, 1862,

' "To the Hon. the Treasurer and Masters of the Bench of the Middle Temple.—Gentlemen, now that I have had an opportunity of perusing the observations which have been embodied with your decision, and of a copy of which I have to acknowledge the receipt, I cannot refrain from expressing my astonishment at their severity and injustice. In the first place, I do not know, nor have you pointed out, what version I have given of the transaction with Mr. Parker, inconsistent with my perfect right to act as I did with regard to the £500 I received from him. From first to last, my statement has been, and still most solemnly is, that Mr. Parker paid the £500 in consideration of becoming partner with me in one-half of my interest under the agreement with Captain Greene, an interest vested in me conditionally on my undertaking to spend £1,000 in forming a company. Having signed a contract with Captain Greene, the only duty that devolved on me was to expend £1,000 for the foregoing purpose, a duty which I honestly set about, and did, in fact, to a great extent discharge, but in the fulfilment of which I was mainly defeated by Mr. Parker's change of mind, and by the estrangement his clerk succeeded in producing between Captain Greene and me. The charge of concealment, and of unjustifiably using the money without Mr. Parker's consent, must fall to the ground if the foregoing proposition be admitted. With reference to the withdrawal of the pleas in Mr. Parker's action, I must remind you that I acted with the full approval of my legal advisers, (one of them a most eminent member of the Bar,) of my father-in-law, and of my wife; that I was distinctly told by Mr. Bennett, that Mr. Justice Wightman suggested the termination of the affair, to which alone I believed I was acceding; and that, besides the express evidence before you as to the unqualified declaration by Mr. Woollett, on Mr. Parker's behalf, that every imputation of fraud was withdrawn, you have the subsequent correspondence between Mr. Parker and myself, and the important evidence afforded by the entry of the judgment in the cause. I may here observe that so confident did I, and, I may add, Mr. Lush, feel that the Bench would have pronounced an unqualified judgment of acquittal, that I forbore applying to you to hear upon this point further oral and documentary evidence, which, after the meeting of December 2nd, I was, for the first time, placed in a position to adduce. The observation as to my affidavit, I think would never have been made, if it had been borne in mind that Mr. Hudson was in India at the time, and that I had obvious grounds to believe

he would have given more important evidence than, after the lapse of time, he was, in fact, able to do. Let me, in passing, remark here that Mr. Hudson's very caution in his evidence in Parker's case should fairly entitle him to greater consideration when he speaks positively on other matters with which his mind was naturally more familiar. In reference to Captain Robertson's case, I am charged with want of consistency in my statements, indicating 'recklessness of assertion.' The only instance pointed out upon which this grave charge is left to rest, is one which, I submit, does not in the remotest degree justify the observation. It is said that the expression in my letter to Mr. Lefroy, 'as much Captain Robertson's debt as my own,' is at variance with my assertion of non-complicity in the Waller rig; but, in the first place, the letter containing that expression was written more than a year after 'the rig' occurred, to a gentleman who was not concerned to know the exact relation in which his client and I stood regarding it: and, secondly, what was the debt I was writing about? It was a debt originally contracted by Mr. Heneage, on which he alone was legally liable to Mr. Helps. Captain Robertson was only bound *in honour* to assist in meeting it; because he was one of a number who engaged in a common operation for a common purpose. I, too, was only bound *in honour* to meet it, because I took upon myself that liability and others to an enormous amount, believing that the brokers acted in the honest, but false impression, that I sanctioned the act of the Board of which I was chairman, and indulging in the sanguine hope that the ultimate success of the company itself might reimburse me, or, at the least, diminish the amount of my loss. In this sense, and in this sense only, was the expression used, and to put any other sense upon it, in the face of the positive evidence given the other way, and of the original documents which formed the basis of the agreement between the directors and Lakeman, which is unsigned by me, and to which I was no party, seems to me to justify the remark that, to the last, every presumption has been made against me by the Bench. You go on to express your doubts as to my capability of doing an act in February, 1853, amounting to what you are pleased to designate as one of 'romantic generosity.' If you had given me notice of your intention to pass judgment on a matter which was only incidentally introduced to your attention, I could have produced nearly all the broker's notes, of which I took possession at the time, with other documentary evidence; and I could have called a number of witnesses to place my conduct beyond the possibility of an unfavourable construction. One piece of evidence, by way of example, I will venture here to cite. You will remember the name of Mr. Mercer Murray as having been frequently referred to in the course of the inquiry. He kept the key of the tin box in which Captain Robertson placed his securities on the Saturday, and his hands, if I mistake not, took them out and

delivered them to Mr. Heneage on the Monday. No man knows better, or so well as he, all the history of the transactions in Waller shares. Although I had no communication with him since February, 1853, and though we parted then under the circumstances I have described, I believed he would do me justice if called as a witness; and accordingly, during the last vacation, I tried, but in vain, to procure his presence in England for that purpose. In a letter, however, from him to me, and bearing date 'Hôtel de Rome, Vichy, L'Allier, France, August 10th, 1861,' he begins by observing: 'Yours of the 8th instant only reached me here this morning from Boulogne, and my first feeling was indignation at the falseness of the accusations against you.' He then adds, 'If ever a man deserved a crown of martyrdom, you were most justly entitled to it for the unparalleled exertions you made to prevent any dishonour attaching to the Company;' and he says further on, 'I, for one, can never cease to feel grateful to you for your self-immolation, that no breath of scandal should ever justly attach to any one at the Board.' A harsh and wounding suggestion, that I could not be so generous, is the return I get from my own profession. A 'crown of martyrdom' for an act of self-immolation is the award of Mr. Mercer Murray. Upon the last paragraph of your 'judgment' I wish simply to say, I think, having frankly admitted an error, these observations might have been spared, the more so as the Bench must bear in mind that I was placed, as regarded Mr. Brown, in the difficult position in which honesty pointed one way, and etiquette another. There is another subject to which I feel bound to call your attention. You have held fifteen meetings, and in no single instance has your parliament been composed a second time of the same members as any previous parliament. In point of fact, therefore, I have been tried before fifteen different tribunals. Your numbers have been equally irregular, varying from a maximum of eighteen to a minimum of seven. One of your number first attended at the fifth meeting, one first at the sixth, two at the ninth, two at the tenth, and one at the thirteenth! The following is an analysis of the attendance of all the Bench:—Two attended fifteen meetings, two attended fourteen, one attended twelve, two attended eleven, one attended ten, two attended nine, two attended eight, two attended seven, three attended six, two attended five, one attended four, two attended three, two attended two, and two attended one. Here is certainly a remarkable disregard both of the spirit and letter of the wise rule of the society, which requires the attendance of the same members on every adjourned hearing of an inquiry into an accusation against a barrister. I have no right to penetrate the secrets of your chamber, but I confess I should like to know how many of those who heard the evidence of Mr. Parker and his witnesses, took part, and, if so, what part, in framing or supporting the observations made with reference to that case, I appeal to those members of the Bench who were present at the third meeting,

whether the mode in which the evidence of Mr. Parker especially was given, did not strongly impress their minds with the impossibility of seriously regarding it. The perusal, more or less careful, of printed evidence (even were it of the most accurate character), can never supply the place of opinions derived from the hearing of the witnesses themselves; and I cannot help feeling that I have been hardly dealt with, if members of the bench who have only formed their conclusion upon the printed reports, intermixed and confused as the various cases are, have joined in reflections which, I firmly believe, would not have been made, or would have been greatly modified, had they attended the inquiry with greater regularity. It may, of course, be said, that my attention was called to this rule, and that I ought, on subsequent occasions, to have made objections on the ground of its non-observance; but my attention was not called to this rule till so late as the *ninth* meeting, though it ought to have been mentioned on the second, and it is obvious that it would, at that time have placed me in a most invidious attitude to have appealed to this rule with reference to any Benchman I might have objected to. I could not, moreover, for a moment have anticipated that members of the Bench who had not heard the evidence as to any particular case, would have suggested observations, or even joined in a judgment, with reference to that case, of the fairness of which they were not, from this very circumstance, in a proper position to decide. On this ground, as well as those I have before specified, I beg to enter my solemn protest against that part of your judgment which contains the observations of which I complain, and which, I rejoice to know, have *not* received the unanimous approval of the Bench; and I request that this letter may be recorded along with the judgment."

To that letter there is this postscript:—

"The foregoing letter was written before I went down to address my constituents at Southampton on Tuesday evening last. The meeting was fixed for eight o'clock. I arrived at the terminus at twenty minutes to eight. I was then, for the first time, informed that the walls of the town were posted, and the people, as they went to the meeting, were being liberally supplied with a handbill, of which I beg to enclose a copy. I ask the Bench whether the peculiar wording of these four questions, and that so as to convey the most unfavourable construction, does not evidence the hand of some one who has been acting on information derived not very far from their parliament chamber. This, however, is not all. A prominent member of the Tory party in Southampton has been going from place to place, exhibiting a written document, giving in minute detail the result of the voting in your chamber on the various charges, the numbers for a verdict of 'Not guilty,' or of 'Not proved,' &c. Whence has this person been furnished with this information? By what right, and by whom, are facts made known to him which have

not been communicated to *me*? The answer is one I respectfully leave the Bench to supply."

That is followed by a letter from the Under-Treasurer of the Middle Temple, dated February 15th, 1862.

"Sir,—I am desired to acknowledge the receipt of your letter of February 3rd, 1862, addressed to the Treasurer and Masters of the Bench of the Middle Temple, and to say that it has been laid before the Bench."

Mr. LUSH:—You will observe, therefore, that when the writer sat down to write this very article, he had not merely the fact before him that the Benchers had found the charges against Mr. Seymour not proved, but he had also before him Mr. Seymour's full explanation of it all in the protest which has just been read, and yet he has ventured to call Mr. Seymour "the most unblushing of swindlers," one of the law's blackest sheep, a person "enriched with a power of impudence and fertility in fraud which defy all description." These are the data on which the writer of this article has ventured to use such words, he having before him at the very time Mr. Seymour's protest, and the fact that the Benchers had ignored the charges which had been made against him. Then the writer of this article goes on to say:

"It is not our intention to enter into any consideration of the specific charges brought against Mr. Digby Seymour, because, like the rest of the public, we are not yet in possession of the means for deciding on them impartially with a full knowledge of the facts. But when we consider that we have, on the one hand, the deliberate opinion of a number of honourable and distinguished men, who have gone fully into the case, and on the other the bare assertion of innocence by an interested person, who declines to take the plain course of publishing a complete statement of the circumstances, and that person one who publicly stated that the Benchers had given a verdict in his favour, when he held their condemnation in his hands—we cannot hesitate for a moment as to the verdict we must pronounce."

Mr. Seymour had stated, and had stated truly to his constituents at Southampton, that the Benchers had acquitted him of the charges which had been made against him; but this person says, "You held your condemnation in your hand at that very time," which would lead any reader to suppose that he held in his hand at that very time a verdict against him, and he says, "I will take upon myself to say that you were guilty of them all."

LORD CHIEF JUSTICE COCKBURN:—No; Mr. Seymour protested

against the censure; so far as the verdict was one of acquittal, Mr. Seymour would not, of course, protest against that; but he protested against the censure; and then the writer of this article says: "Considering who the persons are who pronounced the censure, and that it is the man against whom the censure is pronounced who is appealing against it, we have no hesitation as to the judgment we should pronounce." I think that is the fair construction to put upon it.

MR. LUSH:—I certainly should have read it in this way, "We have no doubt as to the verdict we should pronounce, that verdict being a verdict that you were guilty."

LORD CHIEF JUSTICE COCKBURN:—That is a matter for the jury; I must say, that on reading it, that is not how it strikes me.

MR. LUSH:—I am much obliged to your lordship. I do not desire to put upon one single word a meaning that it does not fairly bear. Then the writer goes on in this way:

"Until Mr. Digby Seymour has shown to the public, by a full and ungarbled publication of the evidence given before the Benchers, that their judgment was unjust, we must continue to believe that it was delivered in accordance with the truth, and that the censure therein was merited."

LORD CHIEF JUSTICE COCKBURN:—"The censure."

MR. LUSH:—Yes, my lord. That shows that your lordship's view was the correct one.

"Nor is our conviction in the slightest degree shaken by Mr. Seymour's claim to a crown of martyrdom, or by his continually repeated and never redeemed promise, of placing himself right before the world by a public vindication. The last time he had recourse to this expedient, now thoroughly worn out, was on the 4th of April last, in a letter to the *Times* which we extract here."

Then he sets out the letter to the *Times*, which is in these terms:

"Sir,—A statement appeared in the leading columns of one of your contemporaries of this day which is calculated, if not contradicted, to obtain a wide publicity, and to prejudice me most seriously. That statement is, that I have been expelled from the Bar of the Northern Circuit, having first been found 'wholly guilty' of the charges of which the same authority afterwards states that the Benchers found me 'half guilty.' I was most anxious at once, in my place in Parliament, to call attention to the paper in question, but I am told, on the highest authority, that the matter of the article was not such as to enable me to treat it as a breach of privilege. I have therefore placed the matter in the hands of my solicitor. I hope, however, you will permit me to say that the statement is utterly

false. I have not been found guilty by my Circuit of any one of the charges which were brought before the Benchers, nor have I been 'expelled from the Bar of the Northern Circuit,' a Circuit on which I hope long to continue to practise. All that has really occurred, both before the Benchers and on my Circuit, will, as soon as I can possibly do so, be placed before the public, who will then be in a position to judge between me and my accusers, and to form an estimate of my conduct and their motives."

Then the article goes on:

"The statement which appeared in the newspaper referred to by Mr. Seymour was certainly incorrect. Mr. Digby Seymour has not been expelled from the Northern Circuit, because there is no power residing in any quarter to expel him therefrom, as long as by the grace of the Middle Temple Benchers he may continue a member of the Bar. But can he deny, will he deny, that the Bar Mess of the Northern Circuit have relieved themselves of his companionship, by a resolution passed at a Circuit Court during the last Spring Assizes? We cannot believe that such a determination was arrived at without a fair, and even searching inquiry, into the charges brought against Mr. Digby Seymour."

Now, gentlemen, just observe what this is:—Somebody had written in the *Times* that Mr. Digby Seymour had been expelled from the Bar of the Northern Circuit, having been found wholly guilty there of the charges of which the Benchers had found him only half guilty. Anybody reading this passage would suppose that Mr. Seymour was no longer a member of the Northern Circuit. Mr. Seymour writes, "I have not been expelled from the Circuit: I am still there; and as to their having found me guilty, they have done no such thing;"—the fact being that, while this proceeding was pending before the Benchers, the gentlemen of the Northern Circuit met and came to a resolution that Mr. Seymour was not to be a member of the Bar Mess, but they did not find that the charges which had been made against him had been proved. That they came to a resolution to exclude him from the Bar Mess is one of the matters that Mr. Seymour felt hurt at, but that is not a matter that would justify this writer in pinning upon it, as he has, these scandalous imputations.

Then the article goes on to say:

"We observe that in the last epistle the writer expresses some regret that the editor who fell into this (to a layman) very natural mistake, had not violated the privilege of Parliament thereby, and thus afforded to Mr. Digby Seymour the opportunity of laying the whole matter before the House. But why wait for a breach of

privilege? Honourable members have, before now, become the subjects of unjust suspicions, and have thereupon themselves moved the House for the appointment of a select committee of inquiry, with the full conviction that they would thus clear their scutcheons of blot. If Mr. Seymour be indeed enrolled, as he assures us, among the army of martyrs, why does he not take the same simple and straightforward course? Or if his native modesty prevents him from obtruding himself on Parliament, why should not some other M.P. clear the character of the House by moving for such a committee, and instituting such an inquiry? By all means let us have some investigation; let the chairman of the committee send for books, persons and papers; let the members sift the whole matter to the bottom, and when Mr. Digby Seymour has come out of the scrutiny, not merely as white as wool, but with refulgent crown of martyrdom to boot, let the House at once abolish the Benchers—and the Bar, too, if it lists—and let it further transmit the sufferer's claims to the canonizing council which is shortly to assemble under his Holiness, in order that St. Seymour of Sunderland and Southampton may be duly added to the calendar. Let it not be supposed, however, that we are prepared to record any approval of the conduct of the Benchers. We have not the slightest doubt that they acted in this painful business with perfect integrity, and with the best intentions; but it is impossible to acquit them of foolishness and error. In the first place, we are clearly of opinion that if they considered Mr. Digby Seymour guilty of even one of the charges brought against him, (and they admit that they did so,) they were bound to have disbarred him."

This writer is angry with the Benchers of the Middle Temple because they did not disbar him for that one matter which he admitted—for having acted honestly towards a solicitor to whom he was indebted, by saying, "I have no means with which to pay you, but I am willing to pay you in the only way in which it is in my power to do so, by returning you the fees you give me." The animus of this writer leads him to say that Mr. Seymour ought to be disbarred for that.

Then the article proceeds:

"Censure, however abjectly received when it was pronounced, was no adequate punishment for such an offender. Very recently, an unknown member of the Bar has been expelled from its ranks for offences certainly not greater than the charge which the Benchers say was proved against Mr. Digby Seymour. Is it right the public should suppose that while the whole severity of power is brought to bear against the weak, there is a dread of enforcing discipline in the case of a member of Parliament and a Queen's Counsel?"

What is the case to which they allude as one in which a gentle-

man had been expelled from the Bar "for offences certainly not greater than the charge which the Benchers say was proved against Mr. Seymour"? Will my friend explain to what case his client alludes? Who does he mean has been expelled?

"In the second place, it is quite clear that the judgment of the Benchers ought to have been screened immediately after it was pronounced," (that is, it ought to have been put up in the Hall,) "we cannot conceive what reason could be given for maintaining secrecy. And, thirdly, we are strongly of opinion that when Mr. Seymour challenged the publication of the evidence, it should at once have been given to the world. The honour of the Bar, and the dignity of the Bench demanded such a course, and we deeply regret that ill-advised counsels to the contrary have prevailed in the parliament chamber of the Inn. We cannot, however, concur in the idea that investigations before the Benchers into the conduct of every accused member of the Bar should necessarily be held in public. The adoption of such a rule would, we think, be a great evil. The jurisdiction of the Bench is exercised in what has been justly termed a domestic forum, and the nature of such a tribunal is essentially different from that of an ordinary court of law. To parade questions of etiquette, and even of morality, before the public, would be often unjust to the accused, and would add no security to the discipline of the profession. But we are alive to the mischief occasionally produced by the present practice, especially when an unscrupulous man makes capital out of the very privacy which has alone saved him from utter ruin."

Here the writer says, in effect, that the Benchers did right in not having this investigation public, while he at the same time gives to the public, not the evidence enabling them to judge for themselves, but his own verdict that Mr. Seymour ought no longer to be a member of the Bar. Then the writer says:

"Perhaps it would be well to give to the accused in all cases the *option* of a public hearing."

Then the last paragraph in the article is:

"In the proposal which has been made for a conjoint committee or council of the four Inns, to conduct inquiries of this kind, and to administer the discipline of the Bar, we most entirely concur. Such a measure would re-assure the public as well as the profession, and have a good moral effect; and as the institution of such a body would be only following up the precedent already set by the establishment of the council of legal education, which has worked admirably, we may hope that the Benchers will see the wisdom and expediency of making this step in advance without any further delay."

That, gentlemen, is the whole of the article of which Mr. Seymour complains. Just observe what it is. The character of a man at the bar is of course his fortune. Mr. Seymour had gone through the ordeal, painful enough to anybody, of answering charges, not of professional misconduct, but charges as to his conduct in other matters which had occurred years and years before. There had been an inquiry gone into which had occupied nearly, if not quite, eight months; he had been subjected to a very severe censure from the Benchers, though they did find that the charges which had been made against him were not proved, except in the one instance to which I have adverted, and after having gone through this ordeal, and after having been thus acquitted, the writer of this article takes upon himself, not to tell the world what the evidence was upon which the Benchers came to the conclusion at which they arrived, but to say in effect, "Although you (Mr. Seymour) have been acquitted you ought not to remain any longer a member of the Bar; you are one of the second class of Irishmen we have spoken of:— 'The Irish blackguard, swaggering, foul-mouthed, and shameless; the most insolent of upstarts, the most unblushing of swindlers;' 'one of the blackest sheep of the law;' enriched with a power of impudence and a fertility in fraud which defy all description." What justification can there be for that? The writer shelters himself under the name of the publisher, and will not disclose himself; but having got Mr. Seymour's explanation and protest before him, he dares to write this article and to have it printed in a book which will remain upon the shelves of libraries as long as law libraries last, as a record against Mr. Seymour. But that is not all; very often these books, when a death has taken place, find their way to the bookstalls in the Metropolis; and for all time to come, in every law library, in every club, at bookstalls and in other places, this article will remain as a permanent indictment against Mr. Seymour, although, after undergoing the painful ordeal to which he was subjected, he was acquitted by the Benchers of the Middle Temple. Do not let it be supposed that I mean to complain of the manner in which that learned body did the duty they had to perform; but it is nevertheless hard upon Mr. Seymour that he should have been called on when that step in advance was obtained by him, which every man in the profession looks for sooner or later, to have charges raked up against him which must have been known seven or eight years before. Mr. Seymour brings his action; a letter is written to Mr. Butterworth on the part of Mr. Seymour, and the only answer that is given to that letter is a reference to Mr. Butterworth's

solicitor. There is no offer of an apology, or retractation, or anything of the sort. The mysterious person who is behind Mr. Butterworth does not wish to do anything of the kind. He does not apologise, and when he is challenged he shrinks from putting on the record a plea of justification. Whoever he may be, he felt it necessary to tell the public, or the profession, why he did not justify the libel. Let us see what reason he gives in the next number of his Magazine, for not justifying it. Mr. Seymour, in his declaration sets out, I believe, the whole of the libel, and says, "I charge you with having meant to say of me that I am a 'black sheep of the law,' 'an Irish blackguard, swaggering, foul-mouthed, and shameless—the most insolent of upstarts, the most unblushing of swindlers;' 'enriched with a power of impudence and a fertility in fraud which defy all description.'" Nobody can doubt that the defendant could sustain a plea of justification if he could prove that Mr. Seymour was what he there describes him to be. Now what is the writer's apology for not having pleaded a justification? In the very next number of this periodical, which was published in August, we find this:

"Mr. Digby Seymour has thought fit to commence legal proceedings against the LAW MAGAZINE in consequence of the article which appeared in our last number. During the whole period of the existence of this Magazine, it has commanded, we believe, the respect and confidence of the profession," (so much the deeper is the sting contained in the libel,) "and Mr. Digby Seymour is only the second person who has ever imputed to those who conduct it, or to its eminently respectable publishers, that its pages have been made the vehicle of libel. We say the second person, because we are aware that Mr. Edwin James, in that appeal to the New York public on which we have commented elsewhere, has made a similar imputation against us, and attributed to our personal malice and propensity for libel no small share of his evil reputation. We are content to leave the reclamations of both these gentlemen to the deliberate judgment of the Bench, the Bar, and the whole body of the profession; and we shall place the article in question confidently in the hands of a jury, as a fair and reasonable comment on notorious facts, written with the same knowledge of the circumstances as the whole public possessed, mis-stating nothing, suppressing nothing, and consisting in a great degree of materials supplied by Mr. Digby Seymour himself."

What this writer can have in his head, or what sort of mind he can possess, which can bring him to the conclusion that the article he has written is "a fair and reasonable comment upon notorious facts," I am at a loss to know. Can it be said that when a man is called a "blackguard," when it is said that he is unfit to be at the bar, that he is a "black sheep of the law," that he is "the most unblushing of

swindlers," and "enriched with a power of impudence and a fertility in fraud which defy all description," that those are notorious facts? What are the facts? Why, that Mr. Seymour, about seven years after the transactions in question had occurred, was summoned before the Benchers of his own Inn on charges which the Benchers, after investigation, found were not proved, but with respect to which they administered a reproof to him, against which he protested; and upon that the writer of this article thinks fit to apply to him language such as that which you have heard, charges him also with having bought his rank by corruption as a member of Parliament, and then urges before you that what he has said is nothing more than a justifiable comment upon notorious facts. Observe, too, how the writer puts Mr. Seymour side by side with other persons whose names are mentioned or who are referred to in this article. I do not know whether my friend is instructed now to contend that this article is not a libel, that it is not defamatory of Mr. Seymour at all, and that he had a perfect right to publish it. If he should be, I think you will come to a different conclusion. Then they go on to say:

"We should hardly have thought the matter worth any notice in these pages, had it not been for the statements recently made by Mr. Digby Seymour, in the House of Commons, and at Southampton, in reference to the action he has commenced against our publishers. Mr. Seymour has been repeatedly challenged to bring his whole case by appeal before the Judges, and thus satisfy the public and the profession that the charges which have been made against him are unfounded."

Gentlemen, this fact I may state, and I will prove to you, that those who advised Mr. Seymour, did advise him (whether rightly or not is not the question here) that no appeal lay to the Judges. Their opinion was that the visitatorial powers of the Judges could only be exercised in cases in which a person's status as a barrister was affected by the judgment, and that had Mr. Seymour been disbarred, he would have been better off than with such a judgment as that which was pronounced by the Benchers, because then he could have appealed to the Judges. Those who advised Mr. Seymour, whether they advised him rightly or wrongly, certainly entertained that opinion. Then they say:

"This course is the more called for, as Mr. Seymour holds a judicial position as Recorder of Newcastle, and it is a thing unheard of in this country that any man should exercise the office of a criminal judge, in respect to whose character grave imputations remain unrefuted. In order, apparently, to avoid the course which we should have

supposed any man desirous of vindicating his character would have eagerly followed, Mr. Digby Seymour alleges that he has already taken steps to prove his innocence before a jury; meaning by such steps, the proceedings commenced against the publishers of this Magazine. We must disabuse the public of the idea intended to be conveyed by Mr. Digby Seymour. It is not possible that the judgment of the Benchers on the transactions of Mr. Digby Seymour can be reviewed, or that any definite opinion on those transactions can be arrived at, by means of an action for libel against our publishers. We find that the declaration in the action sets out the whole of our article, without any specific innuendo as to any portion or sentence; thus, as every lawyer is aware, practically precluding any other plea than that of the general issue. It is clear, therefore, whatever he may assert to the contrary, that the object of Mr. Digby Seymour in this action is not to challenge proof of any of the specific accusations against him; that it is a proceeding for other reasons against a private individual; and that an investigation on public grounds, and in a way to bring out the whole truth, has still to be demanded. We know that we are speaking the opinion of the heads of the profession, when we say that such an investigation is absolutely necessary to maintain the purity of public justice, and the honour of the Bench and Bar. We ought to add, that we have perused a statement of his case drawn out by Mr. Digby Seymour, and printed for 'private circulation.' The only comment we have to make at the present moment is, that, in our opinion, the defence does not satisfactorily meet the allegations, although, as confessed by the author, it fails to set out the whole of the evidence against him."

That is worse than all; there is the same virulent spirit manifested there that is found in the first article. He further says that which any lawyer ought to be ashamed of writing—that you cannot plead a justification to this declaration. I never heard such a monstrous statement. They say: "You have set out the whole of our article without any specific innuendo." Every lawyer knows what that means. If a man publishes a libel of you and uses terms which are ambiguous, and the meaning of which Judges do not judicially know, and you do not know without an explanation, you then have to put into your declaration an explanation of the meaning of those words; but where the libel itself points to the person, and where it is unambiguous as this libel is, where would you find any pleader who has practised for an hour say it is necessary to introduce the explanation in the declaration in an action for libel; or if there were any difficulty about it, would he not at once go to a Judge in Chambers, and ask to have the matter set right by allowing him to plead a justification? What he says here is really a mere flimsy.

pretence to cover his inability to justify that which he has asserted. He finds he cannot do it; it is not in his power to prove the truth of a single word he has written. Then again, he says: "Mr. Digby Seymour has published now the evidence, or the greater portion of the evidence, brought forward against him. We have read it, and we do not think that his defence is made out." So that, whereas the Benchers themselves, after an investigation which lasted nearly eight months, have said that the charges against Mr. Seymour are not proved; this writer says, "In my opinion, Mr. Seymour's defence is not made out." That, I think, proves what I have said before:—that the object of this writer has not been to correct any irregularities in the Bar, not to promote the public benefit, not to purge any body that is supposed to contain unhealthy members, but to attack Mr. Seymour, for some reason or other which is not apparent—to expel him from the profession—to do that which the Benchers would not do—to hold him up for ever as a person who is unworthy to be ranked among the gentlemen of the Bar.

LORD CHIEF JUSTICE COCKBURN:—Do I understand you to say that the evidence before the Benchers has now been published?

Mr. LUSH:—Yes, my lord.

LORD CHIEF JUSTICE COCKBURN:—I was not aware of that.

Mr. LUSH:—They say: "We ought to add, that we have perused a statement of his case drawn up by Mr. Digby Seymour, and printed for private circulation."

LORD CHIEF JUSTICE COCKBURN:—I understood you to say that the evidence had been published.

Mr. LUSH:—It was published in that way; it was first printed for private circulation only, certain parties whose names appeared in it having given Mr. Seymour notice not to publish it; but since then, they have withdrawn that notice, and now anybody may have it.

LORD CHIEF JUSTICE COCKBURN:—I do not know that it affects the case at all, but for my personal satisfaction perhaps you will tell me, whether it is published in the sense of being published by a bookseller, so that anybody may go and buy it."

Mr. LUSH:—No, my lord, I think not; but the restriction as to private circulation is withdrawn.

LORD CHIEF JUSTICE COCKBURN:—So that now Mr. Seymour may give it to whom he pleases.

Mr. LUSH:—Yes, my lord.

LORD CHIEF JUSTICE COCKBURN:—When we use the word "published," we use it rather in contradistinction to the word "circulated."

Mr. LUSH—The comment here is “We have read it through: and, in our opinion, the defence does not meet the allegation.” This, gentlemen, is the case that I have to present to you on behalf of Mr. Seymour. He has had to go through a most frightful ordeal; in an eight months’ investigation he has been called upon to answer for and explain his conduct in reference to matters which occurred years and years ago—matters unconnected with his profession, but long known to those who brought them forward in the shape of charges against him—and then some one (whether the person who originally made the charges or not I cannot tell) has thought fit to write and publish in this Magazine, which is to be the depository of all that concerns the law, an article such as that which I have read, charging Mr. Seymour with being a person utterly unfit to belong to any society, much less to belong to the Bar, where undoubted probity and integrity are most essential. Mr. Seymour having advanced in his profession by the regular gradations, and having attained a position which gave him a perfect right to calculate on becoming prosperous, if not on making his fortune at the Bar, has been met by an attack such as that which has been made upon him in the article of which he complains, and when he brings his action and challenges the writer or the publisher to prove the truth of the charges that have been made against him, and takes the very first opportunity that is presented to him of having these matters inquired into by a jury, he is met simply with a plea of not guilty. What do you say to a party who publishes such a libel as this and then shrinks from justifying it and proving its truth? What damages do you think Mr. Seymour ought to have? It is not that Mr. Seymour wants to put money into his pocket, that is not his object in coming before you; we all know, however, that the public look in these cases to the sum the jury give as affording an index to the impression made upon their minds; and when the proceedings of this trial come to be read, I hope it may be seen that the evil and the antidote go together, and that the damages awarded by you have been such as to show that in your judgment there was no reasonable pretence for writing this article of which Mr. Seymour justly complains.

Mr. KEANE :—The publications are admitted, my lord.

Mr. LUSH :—And the letters.

Mr. KEANE :—And also the letter to Mr. Butterworth, and his answer referring us to his solicitor.

WILLIAM DIGBY SEYMOUR, Esq., Q.C., M.P., sworn, examined by Mr. KEANE.

Q. You are the plaintiff?

A. Yes.

Q. I believe you are one of Her Majesty's Counsel, and a Member of Parliament for Southampton?

A. I am.

Q. Your father was a clergyman of the Established Church in Ireland?

A. He was.

Q. You were educated at Trinity College, Dublin?

A. I was.

Q. And graduated with honours?

A. Yes.

Q. You were called to the bar at the age of twenty-three, by the Middle Temple?

A. Yes.

LORD CHIEF JUSTICE COCKBURN:—When were you called to the bar?

A. In June, 1846.

Mr. KEANE:—Did you practise on the Northern Circuit?

A. Yes.

Q. And went some of the sessions there?

A. Yes. Newcastle, Durham, Northumberland, and subsequently, Leeds and the East Riding.

Q. And you had a very large business at those sessions?

A. Yes, I may say so.

Q. And were you entrusted with Crown prosecutions there—or with some of them?

A. Yes.

Q. In what year were you first elected a Member of Parliament?

A. At the general election of 1852—for Sunderland.

Q. You were afterwards appointed Recorder of Newcastle-upon-Tyne—in what year was that?

A. In the beginning of 1854; I say the beginning of 1854, but I would rather say 1854—for at this moment it escapes my recollection exactly when it was.

Q. Do you recollect your first hearing of the vacancy in the Recordership—how long it was before you were appointed?

A. At this distance of time, I cannot state how long it was before my appointment.

Q. Are you in any way able to connect your appointment to the Recordership with any vote of your own in Parliament ?

A. Certainly not ; I know it was said that it had some relation to a vote of mine on a public question, but I had voted previously in favour of that measure before the Recordership was known to be vacant ; and I had addressed my constituents at Sunderland on losing my seat, and in answer to a question which was put to me publicly, whether I would support that measure, I said " Yes." At that time I had no idea that the Recordership was likely to be vacant, and my appointment was never in any way connected with political matters. I got a letter from Sir George Hayter.

MR. SERJEANT SHEE :—We cannot have that.

MR. KEANE :—You were not re-elected for Sunderland, but you were afterwards elected for Southampton ?

A. I was not re-elected for Sunderland.

Q. Some years afterwards you were elected one of the Members for Southampton ?

A. Yes, in the general election of May, 1859.

Q. Did you continue to be in extensive business upon the Northern Circuit and in London, in the interval between your resigning the seat for Sunderland and being elected for Southampton ?

A. Certainly ; my practice had steadily and considerably increased, both in criminal and in civil business.

Q. You were appointed Queen's Counsel in the Palatinate of Lancaster ; in what year was that ?

A. At the summer assizes of 1860, I was called within the bar of the County Palatine of Lancaster by Mr. Baron Martin.

Q. And I believe Baron Wilde was the other Judge ?

A. Yes.

LORD CHIEF JUSTICE COCKBURN :—When was that ?

A. At the summer assizes in 1860.

MR. KEANE :—Baron Wilde was the other Judge travelling that Circuit, I believe ?

A. He was ; and the appointment received his express sanction.

Q. Both those Judges had been formerly with you on the Northern Circuit ?

A. They had.

Q. Had you, in the spring of 1861, charge of a Bill relating to the Admiralty jurisdiction ?

A. I drew the Bill, and brought it in myself to the House of Commons.

LORD CHIEF JUSTICE COCKBURN :—A Bill for what ?

A. The last Admiralty Reform Act.

Mr. KEANE :—In the early part of 1861?

A. Yes.

Q. Had that Bill passed the House of Commons before you were appointed Queen's Counsel generally?

A. It had ; it had gone up to the Lords ; it had gone up the previous session.

Q. That Bill passed the Commons?

A. It passed the Commons and went up to the Lords, and Lord Brougham and Lord Cranworth expressed themselves very strongly in its favour.

LORD CHIEF JUSTICE COCKBURN :—Then it was in the session of 1860?

A. In the session of 1860 it passed the Commons, and went up too late to pass the Lords.

Mr. KEANE :—In which House was it re-introduced in the session of 1861?

A. I gave notice to introduce it in the House of Commons, but I received a letter from the late Lord Chancellor Campbell to the effect that he approved of the Bill, and I consented to its becoming a Government measure, and to its being introduced in the House of Lords ; I waived my notice, and the Bill was subsequently passed, and is now the law.

Q. Subsequently to that, did you receive an intimation that you would be appointed a Queen's Counsel?

A. I received that intimation within a week afterwards.

Q. And you were appointed in 1861—you have both the letters, I believe?

A. Yes.

Q. You were, I believe, appointed when a large number of our friends were appointed in the spring of 1861, just before the Circuit?

A. Yes. That (producing it) is the Chancellor's letter, dated February 14th ; and that (producing it) is the notification of my getting rank, dated February 19th.

Q. A large number of the Bar were then appointed?

A. A large number of the Bar were then appointed, several of them being my contemporaries on the Circuit ; we had been the sessions together and had fought the battle honourably for many years.

Q. So far as you know or are aware, was your appointment the result of any bargain or of any political pressure emanating from you on the part of any person about the House?

A. Certainly there was no bargain; and as to political pressure, I think it would have fallen hardly upon me if I had been passed over, considering my legal rank at Liverpool; I was already Queen's Counsel, in effect, for half of my Circuit.

LORD CHIEF JUSTICE COCKBURN:—You say there was no political pressure?

A. None whatever, directly or indirectly; never.

Mr. KEANE:—Has it ever been conveyed to you, in any way, that Lord Campbell expressed any regret at having appointed you to be one of Her Majesty's Counsel?

A. Until I saw it in that article I never had any reason to suppose so.

Q. I think after that you went down to Southampton and referred to some proceedings which had taken place before the Benchers of the Middle Temple?

A. Yes, after that.

Q. And you made the address to your constituents, part of which is published in the article complained of?

A. Yes.

Q. Was it the fact that you found placards all over the town when you got there, referring to those proceedings?

A. Yes; when I got to the railway station there were a great number of them there, and they were handed to my friends who went to the meeting. There was something also besides the placards; there was a written copy of the judgment of the Benchers, with the particulars of the voting in the Council Chamber, and the persons who had voted for and against those condemnatory observations upon me.

Q. Were they all circulating in Southampton?

A. They were all circulating industriously in Southampton.

Q. It is said that you received the intimation from the Bench of their so-called "merciful view" of your case, "with professions of gratitude, tearful, if not abject in their nature." Is there any foundation for that?

A. That is an entire perversion of what occurred. I heard the judgment, as we will call it, read over to me when I came into the room; when it was over, I think I can state as nearly as possible what I said—certainly I can state the substance of it. I said that I thanked the Benchers for their finding with regard to the principal charges. I then referred to their observations on Robertson's case; I said the Benchers had thought proper to twit me with what they called "romantic generosity;" I said that from

the hour when that event unfortunately took place, until then, instead of being a romance, it had been a millstone round my neck, a most unhappy fact; but that I was as generous as I claimed to be. I then referred to Parker's case, and said I had been placed in the unhappy position in which I had been placed there because I had consented, on account of his illness, to set him free from the transaction; and I added that, although perhaps care had somewhat aged me, I believed I was still the youngest man in that room, and that many years would not roll over before they would be prepared to admit that they had done injustice to my motives and my character. I may have spoken with feeling, but I certainly shed no tears.

Q. You are not conscious of having behaved "abjectly"?

A. If I acted in an abject spirit I was not conscious of it.

Q. The protest which has been read, I think you sent in on the 3rd February, 1862; it bears that date; you sent the protest on the day it bears date?

A. Yes.

Q. What was the date of the judgment?

A. In point of fact, I wrote the protest, and it was copied and lying in my chambers before I went to Southampton, and after I came back I added the postscript and sent it.

Q. What was the date of the letter?

A. The 24th February, I think.

Mr. LUSH:—The protest is the 3rd.

A. The judgment was in January.

Mr. KEANE:—I want to know when you got it; do you remember the date?

A. I can tell you if my clerk is in court; I received it on the 23rd January.

LORD CHIEF JUSTICE COCKBURN:—Received what?

A. A copy of the judgment.

Mr. KEANE:—When did you go to Southampton?

A. I think it was the 3rd February.

Q. The date of the protest I see is the 3rd of February.

A. Then I had come back from Southampton.

Q. But it had been composed before?

A. It had been left in my chambers. I had written the protest all except the postscript before I went to Southampton, and when I came back from Southampton I added the postscript, and sent it.

Q. What is the date of the postscript?

A. February 6th; I think my speech was delivered on the 4th February, and I returned on the 5th or 6th.

Q. I think I did ask you whether there had been any promise of a vote by you in respect of a silk gown?

A. Certainly not. It was neither proposed nor, I need hardly say, was it suggested; it was neither the one nor the other.

LORD CHIEF JUSTICE COCKBURN:—You were at that time a supporter of the Government generally?

A. Yes; I had been previously in the House.

Mr. KEANE:—There is a book which has been published by your authority; I believe you had notice from certain parties not to allow it to be circulated among the public on account of their names being mentioned in it?

A. Yes, one or two brokers and other gentlemen said they thought it might be prejudicial to them, unless the whole matter was before the public, to have their names connected with the thing, and they asked me in the first instance not to publish it.

Q. Was that prohibition or request on their part afterwards withdrawn?

A. Yes; I pressed so strongly that they should not insist upon it that they consented to withdraw it.

LORD CHIEF JUSTICE COCKBURN:—When was that?

A. That was, I think, in the month of April.

Mr. KEANE:—And after that you sent copies for private circulation.

A. After that was withdrawn I sent copies to nearly all the members of the House of Commons of any note or position, to a great many members of the House of Lords, and to a great number of the Bar.

Q. And to the clubs?

A. I think so. I gave copies, I know, to friends, who said they wished them for the clubs. I did not, I know, send them direct to the clubs.

CROSS-EXAMINED by Mr. SERJEANT SHEE.

Q. I presume I may take it that all these papers which are printed in the article are correctly printed as they appeared in the *Times* newspaper?

A. Yes, I think so.

Q. Your speech, your protest, and your letters?

A. Yes.

Q. You joined the Northern Circuit in the year 1846?

A. Yes, very soon after I was called.

Q. At that time the leaders of that Circuit [were, I think, my learned friend Mr. Knowles, Sir David Dundas, the late Mr. Matthew Talbot Baines, and Mr. Martin, afterwards Baron Martin?

A. I think so; I know I got my red bag from Mr. Talbot Baines.

Q. There were at that time also on the Circuit, I believe, four graduates of the university at which you had graduated—Mr. Crompton, now Mr. Justice Crompton, Mr. Hugh Hill, afterwards Mr. Justice Hill, Mr. Martin, now Mr. Baron Martin, and Mr. Serjeant Murphy?

A. I can only speak of my own knowledge with regard to Serjeant Murphy; he was a scholar and an eminent member of the University of Dublin.

Q. Do you not know of the others?

A. Not of my own knowledge. I have not the least doubt of it if you put the question to me.

Q. I believe that the members of the Northern Circuit at that time were about 207 in number?

A. Including the local Bar, I have no doubt of it. I believe now they exceed 300.

Q. Of whom more than a dozen were Irishmen?

A. I cannot really say that.

Q. Were there not many Irishmen?

A. There were several, but I do not know that there were a dozen,—I should say there were, I dare say there were.

Q. Baron Martin was one?

A. I have no doubt that you put the question having considered it, and I would not like to say there were not a dozen; but a dozen sounds more than come to my recollection. I cannot recollect a dozen, prominent members of the Circuit.

Q. There were several?

A. There were several. There was Mr. Baron Martin, Mr. Serjeant Murphy.

Q. Mr. Hugh Hill, Mr. Seymour Fitzgerald?

A. He was not upon the Circuit, I think, when I joined it.

Q. Yes—you will find him in the Law List for 1846.

A. Not on the Northern Circuit. There were many men there who may have been called and admitted, but who never practised on the Circuit; he certainly never practised to my knowledge. I never saw him in court on the Northern Circuit.

Q. You say that, from the first, you were made a mark on that

Circuit of "a cruel and jealous opposition, and a determined effort to keep you down if it were possible, because you were an Irishman"?

A. Yes.

Q. Upon your oath is that true?

A. I must first answer you with regard to the words "from the first." If you ask with reference to the time when I joined the Circuit, I think, taken with mathematical exactness, my words convey more than I meant to say, or more than I should be justified in saying; but I do say that very early in the course of my practice on the Circuit, I was, on the part of certain members of that Circuit, made the subject of what I considered a jealous and unfair opposition, and my candidature for Sunderland revealed circumstances and scenes connected with it, that all the Northern Circuit are aware of.

Q. Is it true that you were made "from the earliest time, the mark of a cruel and jealous opposition, and a determined effort to keep you down, if it were possible," because you were an Irishman?

A. On the part of some members of the Northern Circuit, and taking its date from the time when I began to take a prominent position on my Circuit, I consider myself justified in saying so.

Q. Then it is not true that from the "earliest time" it was so?

A. You put the word "from the first:"—"from the earliest time," yes; but not "from the first." I only correct the words which you used, "from the very first."

Q. You say here, "I came among the members of the Northern Circuit with that misfortune which my countryman Grattan has described; I came 'with the curse of Swift upon me.' I was an Irishman. I was made, from my earliest time, the mark of a cruel and jealous opposition, and a determined effort to keep me down, if it were possible." Will you undertake to say that that is true?

A. I undertake to say there was sufficient to justify that statement being made by me. It is one thing, Serjeant Shee, to utter in the heat of a public meeting a sentiment which you pick out, like that which you have now read, and it is another thing when you call upon me on my oath to say whether, having regard to the exact words I am reported to have used, I will pledge myself to them. I say this—upon oath, I had sufficient facts and had looked back at sufficient conduct on the part of some members of my Circuit to justify me in attributing it to that source, for I had no other, and I knew of no other to which to refer it.

Q. You say "on the part of some members"?

A. Yes.

Q. Is not this an imputation upon the body, and was it not meant, when you said it at Southampton, as an imputation upon the body of the Northern Circuit?

A. Well, the body of the Northern Circuit, like other bodies, are often guided by the will of perhaps a few who may have more influence than others, and may tone very much the conduct of the juniors. Juniors do not like to give offence to seniors, and go very much along with them. When I first started politically for Sunderland, in 1852—

LORD CHIEF JUSTICE COCKBURN :—Do not let us go into that ;—the question is, whether you intended to convey by that general language an imputation on the whole body of the Northern Circuit?

A. My lord, I meant to convey that I had been the subject of what I considered unfair representation and jealousy on the part of members of the Circuit, which I thought had not been sufficiently condemned in certain instances by the body, and which I could refer to nothing else but the fact of my being an Irishman.

MR. SERJEANT SHEE :—Then this statement was not true?

A. My statement was substantially true.

Q. That you had been made the mark, “from your earliest time, of a cruel and jealous opposition, and a determined effort to keep you down, if it were possible,” because you were an Irishman?

A. Well; if every word spoken by you or by me were taken down by the plummet and were read with mathematical accuracy, it might be capable of being observed upon.

Q. Pardon me—

A. In the mathematical sense of those words they convey more than I meant them to convey.

Q. In plain common sense—do they not convey a most disgraceful imputation upon the body of the Bar of the Northern Circuit?

A. They convey a complaint on my part. I was stung, and spoke under the feelings of the moment.

Q. Do they not convey, and did you not mean them to convey, that the body of the Northern Circuit had been influenced towards you by feelings unworthy of men of honour and gentlemen?

A. I meant to convey that such feelings had operated against me on the Circuit.

Q. Now, was it true of the body of the Circuit?

A. In the sense in which I then expressed it, and in which I meant it, it was true.

Q. Were not the leaders of the Circuit—at all events, when you

first joined it—entirely free from any such feeling as far as you were concerned?

A. So long as the leaders were not taken from those with whom I was brought more immediately in professional contact; so far as the leaders were concerned, I can have no complaint against them.

Q. Then it was not when you first joined?

Mr. LUSH:—He has not said so.

Mr. SERJEANT SHEE:—From the earliest moment?

A. No.

Q. I do not wish to misrepresent you; you say, "I was made from my earliest time," that is, time on the Northern Circuit?

Mr. LUSH:—He says not.

Mr. SERJEANT SHEE:—Is not that what you meant?

A. I of course spoke looking back over a lapse of years. I did not mean to say from the time I first joined the Circuit; I did mean from the time when I began to take an active position on the Circuit, and more especially when I began to get into business, and made myself politically obnoxious to some members of the Circuit.

Q. Do you mean to say you meant to represent that from the time you got business you were "the mark of a cruel and jealous opposition" because you were an Irishman?

A. I mean to say that I was made, as long back as I can recollect, from no other motive or cause that I am aware of, the butt of insinuations and of jokes and ridicule—for instance, jokes at the grand court, and in other instances, by men who were under the influence of the leaders of the Circuit; if you press me for my reasons, I must give them to you.

Q. Jokes at the grand court? I have been made great fun of myself there!

LORD CHIEF JUSTICE COCKBURN:—There are always jokes there.

A. Pardon me, my lord; but jokes that cut at character are generally presumed to be absent from such places; and in my case they were singularly present, as the records of the Circuit will show.

Mr. SERJEANT SHEE:—Am I to understand that when you uttered these words, you did mean to impute to the Circuit dishonourable and disgraceful conduct towards you because you were an Irishman?

A. If you mean—did I impute it to the body of the Northern Circuit—I did not. There are on that Circuit as honourable men as ever breathed, or ever belonged to any profession, and I believe that I have on that Circuit as warm and generous friends as ever existed; to accuse the whole Circuit, therefore, I did not mean, and if my

words convey so severe an attack on the whole body of the Northern Circuit, I bitterly regret it. I had before my mind then the recollection of conduct which I thought the Circuit had not, as a body, sufficiently condemned—if they had not too long encouraged.

Q. Had your conduct been before the Circuit at all as a matter of inquiry when you made this speech? We find that it was afterwards the subject of an inquiry before a committee of the Bar of the Northern Circuit.

A. Yes, I think so—when I made the speech at Southampton.

Q. Had it?

A. Certainly. Yes, it had.

Q. I believe the transactions which were the subject of inquiry before the Benchers of your Inn, and afterwards before the committee of your Circuit, occurred in 1853-4 and 1855, did they not?

A. 1852-3. Yes. 1853-4 and 1855.

Q. After you became a Member of Parliament?

A. After I became a Member of Parliament. Did you say matters that were the subject of inquiry before my Circuit?

Q. Before the Benchers and before a committee of your Circuit?

A. The only question before the committee of my Circuit was as to the circumstances under which I had consented to give judgment in an action which was brought against me by Mr. Parker, in which I had the benefit of eminent advice.

Q. The only case that was brought before the committee of your Circuit was what is called Parker's case?

A. The settlement of that action; not the case, but the settlement of that action. It was brought before them. The case was never tried, because, after the report by the Benchers, the committee broke up without allowing me to call witnesses. They heard my statement; I implored them to give me a week to finish my case, but they would not do so, and they reported against me, hostilely, without allowing me to conclude my case. They heard three gentlemen against me, two of whom gave evidence behind my back, and they would not allow me to call my witnesses. Mr. Forsyth, Mr. Serjeant Wheeler, and other gentlemen of the Northern Circuit implored the committee not to go on until I had completed my case, and thirty members of the Northern Circuit refused to vote for my expulsion from the mess; which was done upon that report.

Q. Was your expulsion from the mess actually pronounced?

A. I retired from the mess; when I found that the committee were going to publish their report before my case was closed, I sent in my resignation, and then, certain gentlemen, not content with

my resignation, gathered together a sufficient number at York to move for my expulsion.

Q. Was the expulsion pronounced before you wrote that letter of the 3rd April—which is set forth in page 182 of this article—to the *Times* newspaper ;—that letter in which you say, “ A statement has appeared in the leading columns of one of your contemporaries of this day ”—“ that I have been expelled from the Bar of the Northern Circuit ” ?

A. Yes, from the Bar of the Northern Circuit. I recollect that there was a rumour that I suffered very much from—that I was not going the Circuit any more. I suffered very much from that the last time.

Q. I want to know whether at the time when you wrote that letter in which you said you had not been expelled from the Bar of the Northern Circuit—you had been expelled from the Bar mess of the Northern Circuit ?

A. No doubt.

LORD CHIEF JUSTICE COCKBURN :—I thought you said you retired from it.

A. Yes, I retired ;—I sent in my resignation to the mess, grounding it upon the fact of this report being circulated before my case was closed, and I added just now—though possibly your lordship did not catch my words—that notwithstanding that, a number of the Bar met and the committee appealed to them to support them,—as they were their committee they called upon them to support them, and of course called on them to adopt it. Thirty members of the Bar (I am obliged to speak from information here) refused to vote ;—the rest did expunge my name.

Mr. SERJEANT SHEE :—Where was that decision pronounced ?

A. It was where comparatively a small number of the Northern Circuit were assembled. It was done at York. It was not at Liverpool. I do not wish to offer my own opinion, but I believe it would not have been done at Liverpool.

Q. Now we are upon the point of this professional jealousy, I believe I may ask you with confidence whether there has ever been any opposition to you generally at the Bar—on the ground of your being an Irishman—either here at Westminster or anywhere else ?

A. Well, there is a good deal, perhaps, in that word “ Irishman.” A great deal of a man’s zeal and energy—the very qualities which make a man successful in his profession—may spring from his being an Irishman.

Q. Do you not know that on the Circuit, there are plain manifest

Irishmen who are very well received and exceedingly well liked at the Bar?

A. But I think I have been for its faults, and for some of its good qualities too, perhaps, more pronounced as an Irishman than some of those gentlemen to whom you refer, who did not come hot from the university to battle for the honours of the Bar, as I did.

Q. Do you not know that, in point of fact, there is no prejudice at the Bar against Irishmen?

A. Oh with the Bar as a body I believe there is none. I never accused the Bar.

Q. You say in the same passage of your speech: "But, gentlemen, their efforts failed. Step by step I vanquished one difficulty and another, and won, by degrees, the honours which I have received and the dignities which I hold. I obtained a lead at my sessions; I obtained the best Recordership but one on the Northern Circuit." At the time you obtained the Recordership of Newcastle-upon-Tyne, there were many members of your sessions who were your seniors, were there not?

A. My seniors in age.

Q. Your seniors at the sessions, in standing?

A. Certainly there were.

Q. Were you not one of the juniors?

A. I was one of the leaders in practice.

Q. That is not the question, you know. Were there not many gentlemen practising at those sessions much your seniors in standing at the Bar?

A. If you ask me whether there were many gentlemen in practice.

Q. Practising?

A. Attending the sessions, and occasionally holding an odd stray brief, there were several who were my seniors; attending the sessions and doing practice, in the sense of doing a leading practice, I was on a par with any of them.

Q. You say you were on a par with any of them?

A. On a par at the sessions, and more than on a par at the assizes. I should say that at the assizes, I had ten times more business, civil and criminal, than any of those attending the sessions.

Q. But still there were a great many who were your seniors in standing?

A. Not many.

Q. Eight or nine, were there not?

A. Several of my seniors remain at the sessions now who were my seniors then.

LORD CHIEF JUSTICE COCKBURN:—What was your standing at that time?

A. I was of eight years' standing; I think the Act of Parliament requires three years in the case of a Recordership—either three or five.

LORD CHIEF JUSTICE COCKBURN:—I do not think that three years is the limit according to the statute.

MR. SERJEANT SHEE:—I believe it is five; I am not sure.

THE WITNESS:—I am very anxious to be correct for every reason, and I wish upon this point to be correct. When I was Member for Sunderland, in 1852, having to interfere sometimes in the nomination of magistrates, and it happening on one occasion, I recollect, that some of my own committee were on the jury I addressed, I thought it right, from motives of delicacy, to leave those sessions, and I exchanged my Newcastle Sessions and went to Hull and the East Riding, but I obtained the lead there before I obtained my Recordership.

Q. You say you obtained the best Recordership but one on the Northern Circuit. Were the emoluments of the office considerable?

A. £250 a year; as Recorder I am Judge of a local court, to which there are fees attaching, amounting to about £50 a year, so that it is worth altogether about £300.

Q. The jurisdiction is civil as well as criminal?

A. Yes; the business has much increased.

Q. And the jurisdiction is in extent very considerable; it extends to the whole town of Newcastle (a very large town), and part of the district round it?

A. It does; perhaps you will allow me to say, with respect to the Civil Court, that I never knew any business in it before I became Recorder; but I paid a good deal of attention to it, and now there are a great many causes at every sessions, and I believe it has given great satisfaction in the town.

Q. When did you learn that that Recordership was vacant?

A. That I cannot answer.

Q. Was it in the month of December, 1854?

A. I cannot remember; I recollect that it was in the first instance offered to Sir William Atherton, (then Mr. Atherton,) and I remember his telling me that he had great doubts whether he would go down for re-election to Durham.

Q. Was it in December, 1854, during the sitting of Parliament?

A. It was during the sitting of Parliament.

Q. In December, 1854?

A. If you have anything to assist me I shall be glad.

Q. Was it not after the introduction into the House of the Foreign Enlistment Bill?

A. Certainly it was.

Q. Had you spoken on the Foreign Enlistment Bill before you heard of the vacancy in the Recordership of Newcastle?

A. I think I was aware that it had been offered to Mr. Atherton at that time.

LORD CHIEF JUSTICE COCKBURN :—That is not the question—the question is whether you had spoken on the Foreign Enlistment Bill before you heard of the vacancy in the Recordership of Newcastle-upon-Tyne?

A. No; I think I heard of its being offered to Mr. Atherton before I spoke, because I spoke upon the second reading.

Mr. SERJEANT SHEE :—You spoke twice upon it, did you not?

A. Ah, that is the reason why I paused; I believe I spoke upon the first reading, and voted. I was not aware, then, on the first occasion that it was vacant.

LORD CHIEF JUSTICE COCKBURN :—You voted upon the first occasion?

A. On the introduction of the Bill: and at Sunderland when I went down, I recollect, afterwards, a question was put to me about it, which now recalls the matter to my mind.

Mr. SERJEANT SHEE :—Then you were not aware of the vacancy when you spoke on the first occasion?

A. I will answer this, which I am perfectly correct in answering; I gave my adhesion to that Bill by vote; I either voted or paired, or spoke and voted. I cannot at this time say which, but I gave my adhesion, and expressed my intention to vote, and pledged myself to vote for it, before I heard or dreamt that the Recordership was vacant.

Q. Did you apply for it?

A. I think I was asked to send in my standing.

Q. Then I suppose you applied?

A. I do not know whether you call it an application.

Q. There is no harm in applying; many people apply for Recorderships. Did you apply for it? Nobody gets it who does not, I believe, particularly when it is worth £250 a year.

A. I cannot at this moment say.

Q. Come, come, Mr. Seymour?

A. I think I was asked to send a statement to the Home Office, of my standing.

LORD CHIEF JUSTICE COCKBURN :—Did you apply?

A. I think I was advised to do that ; I think I was advised and told that I ought to send a statement of my standing.

Mr. SERJEANT SHEE :—You could not have needed much advice on that point. Did you ask anybody for it by word of mouth ?

A. Except by that application I did not ; I did not by word of mouth.

LORD CHIEF JUSTICE COCKBURN :—What application do you speak of ?

A. If there is a copy of my letter I should be very glad ; I sent in a statement.

Q. You sent it, where ?

A. To the Home Office.

Q. You sent in an application for the appointment ?

A. No doubt, my lord.

Mr. SERJEANT SHEE :—Did you do so ?

A. I have already replied to that ; if you refer to that as an application, I did so.

LORD CHIEF JUSTICE COCKBURN :—It is one thing to send in a statement of qualification, and so on, and another to make an application for the office.

A. No doubt I was a candidate for the office.

Mr. SERJEANT SHEE :—We will go by steps. You did send in a formal application to the Home Secretary to appoint you as Recorder of Newcastle-upon-Tyne ?

A. I sent in a statement stating what my standing at the Bar was, and asking to have my name put down with other members of the Bar as a candidate.

Q. When did you do that ?

A. I cannot answer that question ; it was between the first debate and the second.

Q. Who told you that it was necessary to send in that statement ?

A. I should not like at this moment to say ; I cannot at this moment tell ; I recollect speaking to some of my friends at the Bar.

Q. Did you apply to nobody else ? Did you speak to nobody else upon the subject, but friends at the Bar ?

A. Not that I am aware of ; I recollect no one ; I was told by no political person.

Q. Were you told by no one in the House of Commons ?

A. Not that I recollect.

Q. Will you swear that you were not ?

A. I recollect having a conversation with Mr. Atherton on the subject.

Q. Was Mr. Atherton in any way connected with the Government at that time? Had you no conversation with anybody else?

A. Your question was, Was I told by any person?

Q. In the House of Commons?

A. To make the application?

Q. Yes?

A. I was not told by any political person in the House of Commons.

Q. Will you say that you did not apply to any person connected with the Government for it personally?

A. I no doubt had conversations at that time after Mr. Atherton had had it offered to him.

Q. With whom?

A. At least, I daresay I had.

Q. With whom?

A. I do not at this moment recollect with whom; if you will assist my memory I will give you a frank answer.

Q. I want to know from you; I was not present.

A. I have no doubt that I spoke to members of the House of Commons, for it was very well known at that time.

Q. Did you not apply to persons connected with the Government to give you the Recordership of Newcastle-upon-Tyne? Will you say that you did not?

A. I applied through the Home Office, sending in my application.

Q. That we know.

A. And I have no doubt that the matter was spoken of to me, and may have been mentioned to me by persons connected with the Government; and I may have stated my standing; but I declare most solemnly, if you ask me whether I was spoken to about it, I have no doubt I was.

Q. Did they apply to you about it, or you to them?

A. My recollection is that I sent in my qualifications and claims to the Home Office; I had heard that the appointment had been offered first to Mr. Ingham, I think, and then to Mr. Atherton.

Q. That does not answer my question.

A. I recollect inquiring whether Mr. Atherton was likely to have it, and speaking about it both to him and other friends.

Q. You recollect inquiring whether Mr. Atherton was likely to have it; of whom did you inquire?

A. I think I asked himself.

Q. Nobody else?

A. I dare say I did, but I do not recollect any other person.

Q. Did you not inquire of some person connected with the Government, whether Mr. Atherton was likely to have it?

A. If you will mention any person's name I will give you an honest answer, but you ask me so very generally.

Q. I do not think it is "general." It is not a crime I am asking you about, I ask it for the purpose of the issue which you have raised here.

A. But it would be a crime if I mentioned a name which I cannot recollect, and I say, on my oath, that I do not recollect any individual person connected with the Government to whom I spoke about it, though I have very little doubt that I may have spoken to more than one.

Q. I do not want to speak about your oath unnecessarily, but could you, upon your oath, say that you had not applied personally to any member of the Government for that office before you got it.

A. I am sure I could. I could, and I can, except that application.

Q. Do you?

A. I do; I say so.

LORD CHIEF JUSTICE COCKBURN:—I will take the answer, that you did not, except by written application to the Home Office.

A. Apply to any one about it.

Mr. SERJEANT SHEE:—Or spoke to them about it?

A. At my instance I did not.

Q. Did you speak to them at all?

A. That I cannot say; I cannot speak so positively to that.

Q. Then you will not undertake to say that before you got the appointment of Recorder of Newcastle-upon-Tyne you did not speak to any members of the Government or to persons connected with the Government, in order to get it?

A. I say not.

Q. You say you will not undertake to say that?

A. You say, did I speak in order to get it? I say in the sense of applying for it, or speaking in order to get it, that I did not.

Q. Did you speak about its being vacant?

A. No; I have already said that I may have asked whether Mr. Atherton was likely to take it, in the course of conversation in the House. I remember speaking to him, and I may probably have spoken to others in the House; but I distinctly say that I did not apply except that I sent that application in; I should be glad if it were produced.

Q. Will you undertake to say that, before you got it, you did not speak to either of the Secretaries of the Treasury about it?

A. I will not undertake to say that after I sent in that notice, and after Mr. Atherton had spoken to me upon the question of his return for Durham, one of the Secretaries of the Treasury may not have spoken to me.

Q. Can you not say that he did?

A. I cannot say that he did; I think it is a state of things that is very likely.

Q. Which of the Secretaries?

A. I had made the application to the Home Office; Mr. Atherton had been offered the appointment, and pending the question whether he would receive it or not, I have an impression on my mind that I endeavoured to ascertain whether he was likely to accept it.

Q. Which of the Secretaries of the Treasury do you think you spoke to about it, or perhaps it would be better to say, which of the whippers-in? I will give you their names; Sir William Hayter, Lord Mulgrave, and Mr. Berkeley.

A. I think it was Mr. Berkeley; I think I spoke to Mr. Berkeley.

Q. Did you tell him you should like to have it?

A. I do not recollect; I think I spoke to him upon the subject. I did not apply to him for it, but I do remember one evening in the House of Commons, when a question arose whether Mr. Atherton was likely to be returned again for Durham, some conversation taking place with me with reference to it.

Q. Did you tell him that you would like to have it?

A. I do not recollect saying so.

Q. Will you say that you did not?

A. I will not.

Q. He was not connected with the Home Office or the Secretaries of State?

A. I had no conversation with him with a view to induce him to exert himself to get it for me, nor did I ask him directly or indirectly to do so.

Q. Or intimate that you would like to have it?

A. That is another thing; the very fact that I asked the question about Mr. Atherton would intimate that I wished to have it.

Q. Did you intimate to him that you wished to have it?

A. Except conversation be an intimation, I did not.

Q. It is a plain question.

A. I had made an application to the Home Office.

Q. Did you intimate to Mr. Berkeley, to whom you say you spoke about it, that you wished to have it?

A. I have no doubt he might gather that from the very fact of our speaking about it.

LORD CHIEF JUSTICE COCKBURN :—As I understand it, he came to you ; I only want to see that I have not got my note wrong.

A. I have no recollection whatever of making any application to any person in the Government, or connected with the Government, for the office ; I do recollect a conversation taking place.

LORD CHIEF JUSTICE COCKBURN :—You (Mr. Serjeant Shee) seem to assume that he said he had first spoken to Mr. Berkeley ; whereas I understood him to say, and have so taken it down, that Mr. Berkeley came to ask him about it.

Mr. SERJEANT SHEE :—Did he ask you if you would like to have it?

A. No, he did not.

Q. Or words to that effect?

A. No.

Q. What did he say?

A. I do recollect a conversation, but the conversation was principally with reference to the chances of Mr. Atherton's return for Durham, who I believed was likely to accept it at the time. At the time I had the conversation with him my impression was that it would be accepted by Mr. Atherton, as far as I can recollect now.

Q. Did you speak to Sir William Hayter about it?

A. Not that I recollect.

Q. Will you pledge yourself that you did not?

A. I will pledge myself that I do not remember it ; he distinctly says that I did not.

Q. He does not quite say that.

A. I will be cautious ; so far as I can recall my recollection I do not remember speaking to him about it.

Q. Will you undertake to say that you did not?

A. I will undertake to say, with the qualification I have already given, that I did not. I never applied to Sir William Hayter to exert himself to get it for me, nor do I recollect his speaking to me about it.

Q. Did you tell him that you would like to have it?

A. No.

Q. Did you tell him what your position on the Circuit was?

A. Sir William Hayter, or any person in the House or out of it, would know that I would like to have it.

Q. Did you tell him so?

A. No; I did not tell him so.

Q. Did you converse with him about it?

A. I have no recollection of it.

Q. You made a speech on the Foreign Enlistment Bill, did you not, on the 13th of December?

A. I cannot recal the date; I did speak about it.

Q. I beg your pardon, I think it was on the 22nd of December?

A. You seem to be looking at a record there, and I do not dispute its correctness; you will believe me when I say that I did not anticipate this, you did not give me notice to prepare to answer as to these dates or to be questioned upon these matters.

Q. It is not usual to give notice, but I will give you all the assistance I can as to dates, I assure you.

Mr. LUSH :—It is usual to justify.

LORD CHIEF JUSTICE COCKBURN :—Mr. Lush, that is very irregular; you will have plenty of opportunity of commenting upon that.

Mr. SERJEANT SHEE (To the witness) :—I believe you spoke twice, and I think you spoke first about the 13th of December, and next about the 22nd; I will not take advantage of you.

A. I do not suppose you will, Serjeant Shee.

LORD CHIEF JUSTICE COCKBURN :—What have you (Mr. Serjeant Shee), got before you?

Mr. SERJEANT SHEE :—Hansard.

LORD CHIEF JUSTICE COCKBURN :—There is no objection to referring to it so far as dates are concerned. If you have anything authentic with reference to dates they may be taken, I suppose.

Mr. SERJEANT SHEE :—I have no objection to state that I have myself seen in this publication (Hansard) a speech of Mr. Seymour's, on the 13th of December, in support of the Bill, and that he spoke again on the 22nd.

A. I thank you very much; that is exactly what I say. I say that when I first spoke and pledged myself in favour of the Bill I was not aware that the Recordership was vacant.

Q. It was because you were under that impression that I gave you the accurate date. Now, on the 22nd of December, did you not say in the House that you "were not swayed by any consideration of an apprehension that the Ministers would resign; but, on the contrary, that you felt as an independent member, that when you

had the assurance of the Minister that every exertion had been made to carry on the war with vigour, that he had refused no assistance, come from what quarter it might, and that now he appealed to Parliament to give him another weapon for bringing the war to a speedy and successful termination, you had no alternative but to support the measure."

A. Yes.

Q. Was not the writ for the Borough of Sunderland moved for the next day?

A. It was; but I never understood it was a retainer for my political adherence.

Q. Did you know when you made that speech that the new writ would be moved for the next day?

A. Will you tell me the day on which the writ was moved for?

Q. It was moved, I believe, on the 23rd. Did you know on the 22nd that the new writ for the election of a member for the Borough of Sunderland was to be moved for the next day?

A. I cannot recollect now: I have no doubt I must. You say the writ was moved for on the 23rd, and, therefore, I must have known of it.

Q. Do you not recollect that you did?

A. Except from connecting those facts together; I have no doubt I did.

Q. How long had you known it then?

A. I think it was very generally known in the House; it was in the papers.

Q. Had you known it before you went down to Sunderland, or shortly before you made this speech on the 22nd of December?

A. No, I did not; I pledge my word to it—you have already made a comment on my using the word "oath."

Q. No; I have not complained of it, Sir; I have rather excused myself for using the word than complained of your using it.

A. I went to Sunderland in December to receive a deputation from Hull who wished to present me with a piece of plate.

Q. It was on the Wednesday, I find, before that you made this speech; did you not know then that you were to be Recorder of Newcastle?

A. You mean when I spoke at Sunderland?

Q. Yes.

A. When I spoke at Sunderland I did not know it.

Q. Had you made your application before you spoke at Sunderland?

A. To the best of my belief I had not ; I think I had not ; it is a written document, and it is a long time ago, but to the best of my belief I had not. No, I had not, to the best of my recollection. As you have been so frank in regard to one date, perhaps you will assist me with the other.

Q. I merely wish to be fair, sir.

A. I know I was asked at that meeting if I would support the Foreign Enlistment Bill, and I have a distinct recollection now, my memory being called to the subject, that I did not know it then.

Q. It is not usual, is it, for Recorderships to be given to the members of the sessions practising there—not important Recorderships ?

A. My predecessor in office was chosen from the sessions.

Q. Who was he ?

A. Mr. Williamson, a local barrister ; he had no general practice on the Circuit, and only practised at the Newcastle sessions ; he is an example quite contrary to your supposition.

Q. At that time they were not appointed by the Crown, but by the Municipal Corporation ?

A. That may be.

Q. Is it usual that for important Recorderships, such as this, the selections are made from the sessions Bar ?

A. I can give you an instance. The Recordership of Leeds was given, the other day, to a man very much my junior on the Northern Circuit, Mr. Maule. The Recordership of Scarborough was given to Mr. West, who is of considerably less standing than myself.

LORD CHIEF JUSTICE COCKBURN :—Practising at the sessions ?

A. Yes ; Mr. Maule is the best instance I could give, because his Recordership is worth double mine, and he is my junior, and practised at those sessions.

Mr. SERJEANT SHEE :—When was that ?

A. After the death of Mr. Ellis.

Q. Since your appointment ?

A. Yes.

Q. At that time were there not a great many men on your Circuit of much greater standing than you, and in good practice on the Northern Circuit and in London ?

A. Yes ; I answer your question as you put it ; there were many men who were my seniors, and many men who had good practice.

Q. As many as twenty or thirty on the Circuit, were there not ?

A. Who did civil practice.

Q. Good practice ?

A. Civil practice, not criminal ; no one had better criminal practice on the Northern Circuit, or so good as I had.

Q. Men who were better placed on the Circuit altogether than you ?

A. There were members of the Circuit who were older, and who had larger civil business, and I daresay that in that respect they were better placed.

Q. There were some then on the Circuit who were in good business, and who were there when you were born ?

A. Yes ; and for all I know they may remain on the Circuit now.

Q. And there were many who have since risen to distinction at the Bar, and some who have been raised to the Bench ?

A. Yes ; I daresay.

Q. Is it not so ?

A. In civil practice ; I believe it is usual (at least my experience has certainly been that) for Recorderships to be given to members of the Bar who have had criminal business.

Q. Important Recorderships ?

A. Yes ; Mr. Blanchard, of the Doncaster sessions, got Doncaster ; Mr. Maule, of the Leeds sessions, got Leeds ; Mr. West, of the East Riding sessions, got Scarborough ; and I could give you several other instances. I think the Recorder of Liverpool, who was appointed the other day, practised at the sessions—Mr. Aspinall.

Q. But he had been Deputy-Recorder for some time, you know. At the time you got your appointment, as Recorder of Newcastle-upon-Tyne had you been engaged in any important cases at Westminster, or on the Circuit, other than criminal ?

A. Yes ; I got very early into practice. You are aware of the meaning of the leader of the Bar giving a red bag : it means that his briefs are such as require him to bring a bag into court ; and I got my red bag at the close of my first Circuit.

Q. Had you availed yourself of any opportunity you had of distinguishing yourself in any great case, either at Westminster or on your Circuit ?

A. If I had my fee book I could answer you : I had been in several cases of importance.

Q. At that time ?

A. Certainly at that time.

Q. As leader, or as junior ?

A. Both ; I had been employed before Committees of the House

of Commons in important cases, and had conducted heavy criminal cases on the Circuit as leader—in the town of Newcastle especially.

Q. Criminal cases ?

A. Criminal cases.

Q. In the words of the libel, had you, during the two years that you were in Parliament, secured the passing of any measure by your exertions ?

A. Yes ; I had taken a sufficiently active and prominent part in connexion with the Merchant Shipping Bill of 1852, to receive the written thanks of Mr. Cardwell for the aid I gave. Serjeant Shee was in the House at that time, and knows that I took an active part in that Bill in the Commons.

Q. I decline to say that. I either know it or do not know it ?

A. I have a particular reason to remember it.

Q. That is one measure that you refer to ?

A. Yes. The Bills of Exchange and Promissory Notes Bill was passed through the Commons by me ; it was afterwards amalgamated with a more general measure in the House of Lords ; but the Bill was drawn by me, was brought in by me, and was passed by me.

Q. Do you mean the Bill that was brought in by Sir Henry Keating ?

A. No ; it was brought in by me ; I myself brought it in ; it was the Promissory Notes and Bills of Exchange Bill.

Q. Is that a Bill other than the one that Sir Henry Keating brought in ?

A. There were three Bills. I brought in one, and they were all put into a general measure afterwards ; but I recollect there was a good deal said about it in the press at the time, and I think the *LAW MAGAZINE* had an article about it, and paid me a compliment.

Q. Do you undertake to say that you believe you got that Recordership on account of your professional eminence or position ?

A. I will undertake to say that I believe I was entitled to it from my professional position. What motives were operating I cannot say.

Q. Do you undertake to say you believe that you would have got that appointment if you had not been in Parliament ?

A. I have no hesitation in saying that the fact of my being in Parliament, *ceteris paribus*, may have been considered a matter in my favour, but, at the same time, that is only speculating.

Q. Do you not know that you got it because you were in Parliament and because you supported the Government on the Foreign Enlistment Bill ?

A. No ; I am confident I did not, because I spoke in favour of the Foreign Enlistment Bill, and the Government knew my intentions, before the Recordership was vacant. If you ask me as to any individual pledge, I am distinct and positive that there was none ; but if you ask me generally whether, *ceteris paribus*, my being in Parliament and a supporter of the Government would give me a preference, I do not dispute it ; and I think it ought, if you like.

Q. And you think it did ?

A. Very probably.

Q. Then it was hardly a subject to crow about over the members of the Northern Circuit ?

A. Perhaps you will read the passage.

Q. You say : "Step by step I vanquished one difficulty and another, and won by degrees the honours which I have received and the dignities which I hold. I obtained a lead at my sessions ; I obtained the best Recordership but one on the Northern Circuit."

A. Yes ; and I say that no Government in modern times could in the face of public opinion have given that Recordership to me if I was not qualified for it. A murmur has never been uttered against the appointment, but, on the contrary, every opportunity has been taken in Newcastle to express confidence as to the mode in which I have discharged my duties.

LORD CHIEF JUSTICE COCKBURN : We really cannot go into that. What has been stated at Newcastle is not evidence.

A. Perhaps I have forgotten myself a little bit.

MR. SERJEANT SHEE : I do not doubt your ability ; I am cross-examining you as to a passage in your speech at Southampton, in which, after attacking the members of the Northern Circuit, you boast that you obtained the best recordership but one on the Northern Circuit. Do you really think that that was a subject for boasting ?

A. If you ask me whether I would deliver a speech like that calmly and after consideration, I should say I would not ; but I think some little allowance should be made for a speech delivered under feelings of intense irritation.

Q. Do I understand you now to admit that you did not receive this recordership solely for professional distinction, but mainly and principally because you were in Parliament ?

A. Certainly I will not admit that I received it mainly because I was in Parliament. I say that from my position upon the Circuit I deserved it.

Q. And got it because you were in Parliament ? Is that what you mean ?

A. No ; I do not mean that ; I mean that my being in Parliament was no disqualification to my getting it.

Q. Do you not believe that your being in Parliament helped you very much ?

A. Very possibly.

Q. Do you not know it ?

A. My being in Parliament showed that a very large constituency had confidence in me.

Q. So far then as this is a boast that you had obtained success over your competitors on the Circuit, do you regret having uttered it ?

A. If it is open to be construed as a boast ; I really was not in a boasting humour when I uttered it ; I was rather meeting my constituents, and pointing out to them, to whom I was a comparative stranger, facts in my history. It was not intended as a boast at the expense of my Circuit ; it was not uttered in that spirit.

Q. You say that you obtained the Palatine rank ?

A. Yes.

Q. I suppose that is given to any gentleman in practice whose character is not known to be affected by imputations of any sort ?

A. It is given to any gentleman in sufficient practice, and holding such a position on the Circuit as would justify the judge in giving that patronage. The Chancellor of the Duchy of Lancaster gives to the judges the right of nominating. Mr. Baron Martin nominated me, and I am sure that if I had not practised, or if he thought my character did not entitle me to it, he would not have given it to me. He was on my Circuit for many years.

Q. You go on to say, "Notwithstanding all my traducers, ay, and at the very time when detraction was doing its worst, I received the rank of her Majesty's Counsel from the hands of the late Lord Chancellor Campbell." Had you applied for the coif before you applied for the silk gown ?

A. Yes ; to Lord Campbell, and to Sir William Erle, the Chief Justice of the Common Pleas. He referred me to the Lord Chancellor.

Q. Was it refused ?

A. No ; it was postponed.

Q. That is the way they do it.

MR. LUSH : You (Mr. Serjeant Shee) have no right to make that observation.

MR. SERJEANT SHEE : I am not going to leave it there. That is the way they do it.

A. My application for the present was not granted, but it was

well known throughout the profession that the Chancellor had decided on refusing all applications. He refused many besides mine; he gave no ranks.

Q. When did you apply for the coif? Lord Campbell made several serjeants you know.

A. He made no serjeants between the time of my applying and the appointment of Queen's counsel.

Q. Did he not make our brother Bourke, who is an Irishman, a serjeant?

A. Not between the time of my application and the subsequent appointment of Queen's counsel and serjeants.

Q. When did you apply?

A. I cannot fix the date, but I know that as a fact, which is notorious in the profession.

Q. Did you apply in the last three months of the year 1860?

A. Yes; I think it was the latter end of 1860: it was not long before I got my silk gown; it was the same Chancellor to whom I applied in each case, first for my coif, and then for a silk gown.

Q. Were not objections taken to your being made a serjeant?

A. I have heard lately that objections were taken. I am aware of none; I have no information or authority.

Q. Were none communicated to you at the time?

A. The first time I heard of it was very recently; I do not know whether there is an allusion to it in that article.

Q. Have the kindness to attend to my question. Were none communicated to you at the time when your application was postponed as you say?

A. Directly or indirectly, none whatever.

Q. What do you mean by this: "Finally, notwithstanding all my traducers, ay, and at the very time when detraction was doing its worst, I received the rank of her Majesty's Counsel from the hands of the late Lord Chancellor Campbell"? Who was traducing you then? You refer to his giving you rank as if it was an expression of his opinion that any imputations upon you were unfounded?

A. After I got my Palatine precedence I think I heard that there were certain rumours to my prejudice afloat.

Q. What did you mean by "Notwithstanding all my traducers, ay, and at the very time when detraction was doing its worst"?

A. I suppose if ever a man has been the subject of observation, I have been.

Q. What did you mean by it? It must have been something that came to the knowledge of Lord Chancellor Campbell.

A. There were statements in hostile newspapers at Southampton, and suggestions which no doubt may have been animated by political bias.

Q. You could not have meant that by what you say, "Notwithstanding all my traducers, ay, and at the very time when detraction was doing its worst, I received the rank of her Majesty's Counsel from the hands of the late Lord Chancellor Campbell." You must have meant something other than newspaper attacks. Do you not know that exception was taken to your being raised to the dignity of serjeant-at-law, on the ground of doubts as to your conduct and transactions which were afterwards made the subject of inquiry?

A. When I made that speech I had no such knowledge, nor did I speak with reference to it. I have heard since that an *ex parte* statement was sent to the Chancellor with reference to the settlement of Mr. Parker's action. I had no opportunity ever given to me of meeting the statement, and I am only now telling you what I heard mentioned at the bar—that a statement was sent, but of my own knowledge I know nothing; no communication was ever made to me by the Chancellor that any statement had been sent to him, nor was any explanation asked of my conduct.

LORD CHIEF JUSTICE COCKBURN:—It is clear then that this observation about detraction and traducers cannot have applied to that.

A. Clearly; it is much more recently that I have heard of that.

Mr. SERJEANT SHEE:—What did it apply to, then? It could not have applied to newspaper articles. You say, "Notwithstanding all my traducers, ay, and at the very time when detraction was doing its worst?"

A. Well, detraction had been doing its worst in this sense; that serious attempts to prejudice me had been made at Southampton by rumours in a way that I could hardly get hold of, but which were floating about the town, as to my having been connected with certain companies, and matters of that kind, but I had no special subject before my mind at the time.

Q. Then you did not mean by this to say that Lord Campbell had exercised his judgment in any way upon the matters of detraction?

A. Yes, I did, I meant to say this—

Q. Did you?

A. You say "in any way." You put your question (if you will pardon me for saying so) in a way which makes it difficult for me to answer it. You say "in any way." I say I did mean that he had in one way, that is, I thought my being appointed in the first

place to Palatine precedence, and afterwards to a silk gown, was a proof that the Chancellor could have had no facts before him to lead him to doubt the wisdom of that appointment. I was only drawing my inference from it. You can draw another. That was the inference I drew.

Q. You did not mean to refer to that appointment as a certificate of character from Lord Campbell?

A. Certainly I did, and I do; not it alone; I referred to my rank at the Bar, which was given to me by the Lord Chancellor as a proof that he considered my character entitled me to it.

Q. Did you know at the time you made that speech whether the serious charges which were afterwards brought before the Bench of your Inn had come to the knowledge of Lord Campbell?

A. I will answer you thus—All I meant to convey by it was that the fact of my receiving that appointment was a proof that the Lord Chancellor was aware of nothing in my position in the profession to militate against my claim to that rank.

LORD CHIEF JUSTICE COCKBURN:—If you are going now to another head of cross-examination, I think this would be a convenient time to adjourn.

Mr. SERJEANT SHEE:—If your lordship pleases.

SECOND DAY.

WILLIAM DIGBY SEYMOUR, Esq., Q.C., M.P., *further cross-examined*
by Mr. SERJEANT SHEE.

Q. I have only a few more questions to put to you. In your speech you complain that “the inquiry before the Benchers was conducted by men sitting down after dinner, varying in their number and attendance, and sometimes postponing the inquiry upon the most trifling grounds;” did you not in the course of the inquiry expressly waive all objections on that ground?

A. At the ninth meeting, when there were only seven Benchers present, my attention was called to the fact that there were not enough present to create a quorum; and I expressly waived the objection. All the evidence in the case, or substantially all, had then been heard.

LORD CHIEF JUSTICE COCKBURN:—You say there were not enough present to create a quorum. I do not understand that.

A. I believe by the statute, or according to the rules and regulations of the Middle Temple, as it was intimated to me, there were

not enough present to constitute a Court. I think there ought to be nine present.

LORD CHIEF JUSTICE COCKBURN :—I am not aware of it.

Mr. SERJEANT SHEE :—That does not answer my question. My question is, Did you not waive all objection ?

A. On that occasion I did; not previously.

Q. I ask whether your attention was called to the fact that all the members who had attended at one time had not attended all through, and whether you did not waive any objection on that ground ?

A. I thought my answer was specific.

Q. No.

A. My attention at the ninth meeting was called to the fact, and was called to the rule of the Inn, and I waived it.

Q. What rule ?

A. There was a rule read to me, and part of the rule required the same number of Benchers to be present on every occasion, and part was as to the number who ought to be present.

Q. Did you waive it ?

A. I did ; I waived it upon that occasion.

Q. Was there a shorthand-writer present every day ?

A. Yes ; there was a shorthand-writer.

Q. Was the evidence printed from time to time ?

A. It was.

Q. And was it sent to you in print ?

A. It was sent to me in print ; the greater part of it.

Q. From time to time ?

A. Yes ; not the whole of it.

Q. Not the whole of it ?

A. No.

Q. What portion of it was not sent to you ?

A. A portion referring to the examination of a gentleman called as a witness by me.

Q. Part of the proceedings of one day ?

A. Part of the proceedings of one day, and not an unimportant day.

Q. During the course of the inquiry did you request members of the Bench, who had not heard all the evidence, to attend ?

A. I did ; I felt so much that I was likely to be a sufferer by the extraordinary change in the attendance of the Benchers.

LORD CHIEF JUSTICE COCKBURN :—I must interpose ; you are the plaintiff in the cause, and a witness. You must not make a speech.

A. I did not wish to make a speech, my lord ; my answer is, I did.

Mr. SERJEANT SHEE:—How many ?

A. One.

Q. Only one ?

A. Only one.

Q. Will you undertake to say that you only asked one Benchers, who you knew had not been present during the whole of the inquiry, to attend ?

A. Certainly, only one ; if you will remind me of any other I will tell you ; only one.

Q. That is a very distinct answer, sir ; I do not complain of the answer at all. When the sentence was read to you, it was read in private, was it not, in the Parliament Chamber ?

A. Yes.

Q. No members of the Inn except the Benchers themselves being present ?

A. No.

Q. And that was about the 22nd or 23rd of January, as I understand. You have stated that a copy of the judgment was sent to you on the 23rd of January ?

A. It was previous to that ; a copy was sent to me some days after it was read.

Q. Can you give me the date when the sentence was read ?

A. Some days previous to that ; I cannot give the date.

Q. Some days previous to the 23rd of January ?

A. Yes.

Q. Did you not, when it was read to you, say that you were still a young man under forty years of age, and that you would use every exertion, and that it would be your ambition to retrieve your character, and to prove yourself worthy of the consideration shown to you by the Bench ?

A. I said the first, but not the last ; I substantially said the first.

Q. Tell me, if you please, what you did not say of that which I put to you ?

A. I referred to my being a young man under forty years of age ; I said that great injustice had been done to my character and my motives, and it would be my ambition to live until I had vindicated both.

Q. Did you express at the time your thanks to the Benchers for not publishing their sentence ?

A. No.

Q. Did they tell you that they did not intend to screen it ?

A. No, not then ; no, not at any time ; they did not tell me.

Q. Will you undertake to say that you did not express at the time your acknowledgments or thanks to them for not making it public ?

A. Certainly not.

Q. Did you thank them for not having disbarred you ?

A. Certainly not ; I thanked them for having pronounced as they did with regard to the three principal charges ; and I added what I stated yesterday.

Q. Before this article was published, had not the inquiry before the Benchers, and your conduct, been the matter of public discussion in many newspapers ?

A. It had been.

Q. There were several leading articles in several newspapers.

A. There were articles upon the judgment. You use the word "discussion."

Q. Leading articles ?

A. There were leading articles referring to the judgment and referring to my speech.

LORD CHIEF JUSTICE COCKBURN (to Mr. SERJEANT SHEE) :—Do you mean before the publication of this article ?

Mr. SERJEANT SHEE :—Yes, my lord, before the publication of this magazine.

Q. In particular, had not all the documents which are set out in this article as part of the libel appeared in the *Times* newspaper, and had they not been made the subject of leading articles in that newspaper ?

A. I think so.

Q. And that for at least two months before this magazine appeared ?

A. There were three articles in the *Times*, close upon one another, in the month of February.

Q. And this I see is the May number of the magazine, and it may not probably have appeared till June.

A. I sent it to my solicitor on the 2nd of May ; I was told that it was going to contain an article, and I purchased it.

Q. Now I must ask you this question : you refer in your speech to the rumours which were current against you or about you, at the time or before the time when the Benchers commenced their inquiry ; had you not in the year 1858 taken the benefit of the Private Arrangement Act to rid yourself of the claims of your creditors upon you ?

A. Yes.

Q. And had you not been opposed ?

A. Yes, by one creditor.

Re-examined by Mr. LUSH.

Q. You say you took the benefit of the Private Arrangement Act in 1858 ; for what debts were those ?

A. They were mainly, except as to a very small balance of them, debts that I had taken upon myself, or the balance of debts in connexion with a company of which I was unfortunately the Chairman. I had taken upon myself debts to the amount of nearly £40,000 ; I paid about half of them, and the rest was too much for me. I struggled a long time against them, but I was brought down by them at last.

Q. Was that the Company, your dealings in which formed a subject-matter of inquiry before the Benchers ?

A. It was.

Q. And was that the Company in respect of which it was said that your act would have been one, if done, of "romantic generosity and self-devotion" ?

A. Yes ; I claimed credit for having done the act, and I produced what I thought sufficient evidence to prove that I had done it.

Q. You say that one creditor opposed you ; what was the amount of his claim ?

A. It was a claim of £500.

Q. Was he the only creditor who opposed you ?

A. Yes.

LORD CHIEF JUSTICE COCKBURN :—What was his name ?

A. Parker.

Mr. LUSH :—Was that one of the debts in connexion with that Company or not ?

A. Not in connexion with that Company ; it was a debt arising in connexion with another proposed Company.

Q. Now the rule you have referred to as a rule of the Benchers was read to you, I understand, at the ninth meeting ?

A. It was.

LORD CHIEF JUSTICE COCKBURN :—You were present, Mr. Lush, were you not ?

Mr. LUSH :—No, my lord, I did not attend. It is a rule requiring the same number of gentlemen and the same persons to be present on each occasion.

LORD CHIEF JUSTICE COCKBURN :—I understood Mr. Seymour to say that there was a rule that there must be a certain number of Benchers present to form a quorum.

Mr. LUSH :—No, my lord ; the information is this : nine members

attended at the first meeting, and the rule requires that there shall be the same number all the way through, and there being only seven on this occasion they read the rule, which was not a rule requiring any number as a quorum on any one occasion, but that the same number that begin the inquiry shall go on with it; but I was not present at that time.

Q. You say you had given in your adhesion to the Foreign Enlistment Bill on the motion for the introduction of the Bill into the House?

A. Yes.

Q. And you had voted for its introduction?

A. Yes.

Q. On what day was that?

A. The 13th of December.

Q. At that time was there any vacancy in the Recordership?

A. Not that I am aware of.

Q. When did you go down to your constituents after that?

A. On the 18th.

Q. Did you address your constituents upon the course you had taken with reference to that Bill?

A. I did.

Q. When you say you had given in your adhesion to the Bill, had you pledged yourself to vote for it?

A. I had voted for it.

Q. You had voted for its introduction?

A. Yes.

Q. But had you done so in such a way as to intimate that you would support this Bill through?

A. Certainly.

Q. When you addressed your constituents had you any knowledge of any vacancy at all?

A. No.

Q. When was the second reading of the Bill in the House of Commons?

A. On the 19th.

LORD CHIEF JUSTICE COCKBURN:—How did that vacancy arise? By death, or promotion, or in what way?

A. It was either death or a serious illness. The news came from Constantinople, I think.

MR. LUSH:—Who was the gentleman?

A. Mr. Wilkinson. The 19th was the date of the second reading of the Foreign Enlistment Bill.

Mr. SERJEANT SHEE :—That was the motion for the second reading ?

A. The division was taken that night.

Mr. LUSH :—When was the division taken on the second reading ?

A. On the night of the 19th.

Q. Did you vote upon that division ?

A. I did ; I voted with the ayes.

Q. Did you speak upon that motion ?

A. No.

Q. When did you next address the House upon it, or speak upon it ?

A. On the 22nd ; on the motion that the House go into Committee upon the Bill.

Q. When did you first hear of the vacancy in the Recordership ?

A. To the best of my recollection and belief, upon the night of the 19th I came up by the day train to London ; I was late arriving at the station, and I got down to the House in time for the division. It was after that that a circumstance occurred which I now recall to my memory.

Q. Was it before or after the division that you heard of the vacancy ?

A. It was after.

Q. How did you become informed of the vacancy ?

A. I received a message from my father-in-law, asking me to go to his hotel, and I went there at midnight, and was informed by him of the vacancy, and recommended to apply for the Recordership, and I wrote the letter which I sent at his table.

Q. That night ?

A. That night.

Q. You say it had been offered to Mr. now Sir William Atherton ?

A. Yes.

Q. Did he decline it or not ?

A. Yes, he did ; I recollect speaking to him on the subject.

Q. When did you receive the first intimation that it was given, or was about to be given, to you ?

A. Either the morning after, or some time after, though not long after I had spoken upon the committing of the Bill. At the time I spoke in favour of the committing of the Bill, I had received no promise, directly or indirectly, of the Recordership.

Q. Tell me what was said to you, and by whom it was said, on that occasion about your having it ?

A. The first person I recollect speaking to was Mr. Atherton ; he

said he did not think he would take it himself. I recollect referring to the question as to his going down again to his constituents, and he said that under all the circumstances he would not go for the Recordership, and he stated, that if his opinion was asked he would express his opinion in my favour; and Mr. Watson, afterwards Mr. Baron Watson, also.

Q. From whom did you receive any intimation that you had got it, or were about to have it?

A. As I said yesterday, my recollection is, that Mr. Berkley told me that Mr. Atherton had refused it, and that he thought that under the circumstances I should probably get it.

Q. And when was that said to you?

A. It was either on the night after I spoke on the committal of the Bill or the next day—I cannot recall it now, but it was certainly after that speech.

Q. Was there any word or any understanding whatever, at any time, that your vote was to be influenced by the Recordership?

A. Never: there is not a pretence for the suggestion.

Q. And was it influenced by it?

A. No.

Q. Now, with respect to the Circuit: What is the usual course upon the Northern Circuit as to expelling a gentleman or not from the Bar mess—where is it done?

A. Well: you say, “the usual course”—I have known an instance in which a gentleman was expelled, and it was done at Liverpool. That was on account of his non-payment of some fees due to the Circuit.

Q. In your case, where did the committee sit—at York or Liverpool?

A. The committee sat in chambers in London. They did not meet on Circuit, but when I referred to York yesterday, it was with reference to a meeting which took place at York.

Q. You stated that you sent in your resignation?

A. Yes.

Q. Your reasons you gave us yesterday.—What steps were taken by the committee upon that? You sent in your resignation?

A. I sent in my resignation in consequence of the committee insisting on having the report circulated upon the Circuit before I had closed my case. I then resigned, and then the committee stood upon their rights with regard to the report, and one of them moved that my resignation should not be accepted, but that, instead of that, my name should be erased from the mess list.

Q. I do not know whether you told us yesterday the date of the letter which you received from the late Lord Chancellor as to his taking charge of the Admiralty Bill ?

A. The 14th of February.

Q. And the date of the letter announcing that you were to be appointed Queen's Counsel ?

A. The 19th ; perhaps I may be allowed to add this : All I wish to say is, that the Lord Chancellor had before him a substantial ground for supporting my application for silk.

Q. As to the rumours you have referred to as having been circulated in Southampton and elsewhere, were those rumours relating to the charges which were afterwards before the Benchers, or were they different rumours ?

A. They were the same.

Q. They were as to the same matters that the Benchers investigated ?

A. Yes.

Mr. LUSH :—That, my lord, is the plaintiff's case.

May it please your lordship, gentlemen of the jury ; my learned friend, as I had before supposed, has no witnesses whatever to call before you. He does not produce a single witness to attempt to palliate this libel.

LORD CHIEF JUSTICE COCKBURN :—I should not have permitted it. There is no plea of justification.

Mr. LUSH :—No, my lord ; but, gentlemen, my friend has called no witnesses for the purpose of explaining upon what ground, if any, the author came to write the venomous article which was read to you yesterday ; nor do we know who the individual is who has ventured to put himself forward in this garb, and who shelters himself behind the respectable name of the publisher of this magazine. Talk of garotting, indeed ! What offence can be greater than that of an anonymous writer sending into the world venomous shafts like these, against the character of an individual, and keeping himself in the background from first to last, without attempting to prove, when he is challenged to do so, that he had any justification for it ; and without stating what his motives, and what his reasons were. Is it not obvious that the writer, whoever he is, is a person who is conscious that his motives would not stand the test of inquiry, and who is sensible that his conduct, in writing this abominable libel, could not admit of the smallest justification or excuse ? You do not find the least intimation who the author is, where the information came from, or what was in the mind of the writer when he penned this

libel, which manifests a degree of malignity such as is very seldom to be found in articles of this description. My friend asked Mr. Seymour whether comments had not appeared in the public papers relating to the judgments of the Benchers of the Middle Temple, and he said that comments had appeared; but were they anything of this description? Has my friend shown that any newspaper in England ever ventured to assert one half of that which is charged here? Not one. No doubt it got before the public that inquiries had been going on with reference to the conduct of Mr. Seymour; and no doubt rumours had been in circulation with reference to Mr. Seymour;—that is a misfortune under which Mr. Seymour has laboured for years; misty rumours taking no tangible shape were in circulation against him, and so they were suffered to remain until Mr. Seymour took a step in the profession, which at all events ought to have stopped them; because, if these were charges fit to be brought forward at any time, certainly they were fit to be brought forward at an earlier time when Mr. Seymour was practising at the Bar.

Now what has been the course of cross-examination that has been pursued by my friend? Why, almost from first to last, Mr. Seymour has been cross-examined as to a speech which he made to the electors of Southampton after he had gone through the ordeal of which you have heard; at a time of heat and excitement, when he was goaded on by those abominable placards which were circulated about the town. Almost the whole of my friend's cross-examination of Mr. Seymour, was with a view to ascertain whether everything he had said in the course of that speech was strictly and literally true. Now I will not ask my friend, for I must not be personal, but I would ask any gentleman whoever became a candidate for a seat in Parliament, whether he would like to be put upon his oath as to the literal truth of everything he ever said to electors? Mr. Seymour goes down to Southampton and tells the electors, in substance truly, what has been going on; his language may have been a little exaggerated;—if it was, it was quite natural that it should be so, considering he was speaking under feelings of great excitement and great irritation. He may have said more than could be strictly and literally justifiable, or he may, even, if you please, have highly coloured what he said; and do not forget, gentlemen, that it was Hibernian colouring. It is not fair or just to measure with strict accuracy every word uttered under such circumstances; and yet my friend has been instructed to try the merits of Mr. Seymour's case, and the propriety of the demand which he makes in this action, by the test of whether every word he addressed to the electors at Southampton

on the occasion on which he made the speech to which your attention has been so often called, can be strictly and literally borne out. Could anything be more absurd or unjust? If, instead of a speech addressed by Mr. Seymour to his constituents, it had been an affidavit, you could not have applied it to a stricter test than that to which you have been invited by my friend. That is the only way in which the writer of this article, on being called to account for what he has written, attempts to defend himself. Why does not my friend address himself to the real merits here? What is the good of asking whether it is literally true, that from the earliest time when Mr. Seymour went the Northern Circuit he had been made the mark of a cruel and jealous opposition? Suppose Mr. Seymour did say that which he is reported to have said, it is just one of those flights of language in which a person would be likely to indulge when speaking upon the hustings. What is the use of asking him whether language like this, "I came among the members of the Northern Circuit with that misfortune which my countryman, Grattan, has described; I came with the curse of Swift upon me—I was an Irishman," was strictly and literally true? I say that is all Hibernian language. Mr. Seymour went down to Southampton with feelings of sore irritation, after having gone through the ordeal of an eight months' scrutiny before the Benchers of the Middle Temple, and after having received what he considered a most unjust reproof and censure. On arriving in Southampton he found the whole town placarded with a statement calculated to make people believe that he had been condemned and found guilty of the charges which had been made against him, when, in fact, he had been acquitted of those charges; and then having made a speech there he is now asked whether every word uttered by him in the course of that speech was or was not true. Is not that mere rubbish? What has it to do with the article that my friend is called upon here to defend? What is there in all you have heard to justify the use of language such as that which you heard read yesterday? The writer says:—

"There are two kinds of Irishmen; there is the Irish gentleman, generous, accomplished, and urbane, perhaps the highest type of the genus gentleman to be found in the United Kingdom. There is also the Irish blackguard, swaggering, foul-mouthed, and shameless; the most insolent of upstarts, the most unblushing of swindlers; never destitute of a quarrel, never at a loss for a lie. For as the Irish gentleman is of rare quality, so is the Irish blackguard consummate in his growth. Ireland is always great in extremes, more especially in her psychological productions. She has reared generals who have led their armies to certain victory, and she has reared also the

tribe of cabbage garden heroes. She has adorned our Parliament with splendid orators and consummate statesmen, and has afflicted it also with a breed of bawling demagogues and venal fools. And so it happens, that this green and prolific island, with the singular versatility of her race, has supplied to the bar of England some of its brightest ornaments, and some of its blackest sheep ; bestowing on the former a learning and eloquence which Englishmen are proud to admire, and enriching the latter with a power of impudence and a fertility in fraud which defy all description, as (to the uninitiated intellect) they pass all knowledge. Should one of this latter flock find his way to an English Circuit, it could hardly be considered a matter for legitimate surprise if he should become an object of suspicion and dislike, and '*hic niger est*' be the motto coupled with his name."

Has anything been brought out by my friend's cross-examination of Mr. Seymour to justify the writer in using language such as that ? What has he attempted to do ? The defendant, not having dared to justify what he has said directly, has attempted, indirectly, to show that Mr. Seymour obtained his Recordership at the price of his vote in the House of Commons. That is what my friend has been labouring to prove. Now just see what the fact is. The vote which Mr. Seymour gave, and by which he pledged himself to support the Government with reference to the Bill which was then in Parliament, was given, so far as we know, before any vacancy had occurred ; at all events, it was given before it was known to Mr. Seymour that there was any vacancy. On the 13th of December he had pledged himself to support the Government on that Bill. On the 19th the Bill was virtually carried in the House of Commons. Mr. Seymour voted for it, and at the time he so voted he did not know that there was any vacancy in the Recordership. He has sworn that his father-in-law came to London, told him of the vacancy, and got him to apply for it after he had made his speech in favour of the Bill. If he used the influence which the fact of his being in the House of Commons gave him to get what he fairly could, does that entitle the writer of this article to call him a black sheep ? Mr. Seymour being in the House of Commons, it is very likely indeed that his position, as member for so large a constituency as that of Southampton, gave him an influence over others. That is a natural and legitimate influence which every man looks to : and I should like to know what member of the House of Commons there is, or ever was, who would not use the legitimate influence his position there gives him to obtain, if he can get it, that which he wants. What, in the world, do people go into Parliament for ? Every man, in whatever position of life he may be, will use such proper influence

as his position gives him, to get what he fairly can get. It is human nature ; and if that is to make a man a "black sheep," tell me where, in Heaven's name, I shall find a white one ? You find that one man succeeds, and another is disappointed ; and it often happens that the man who succeeds becomes, on that very account, an object against whom the spite and malice of the man who fails is directed. If my friend could have shown that Mr. Seymour had bartered his vote for the Recordership, (which is what the libel imputes to him, and what my friend tries to insinuate,) and had pledged himself to vote for the Ministry if they would give him that appointment, that, no doubt, would have been an abuse, and a corrupt use, of the influence which his being a member of Parliament gave him. How does the fact stand ? The fact manifestly is, (and if it were not so, my friend has Hansard here and has the means of correcting me,) that Mr. Seymour had voted and had pledged himself to the Government to support the Foreign Enlistment Bill before he ever heard of the vacancy in the Recordership, and, for aught we know, before the vacancy had, in fact, occurred. He voted for it before he heard of the vacancy ; and sent in his application for the Recordership as any other gentleman might, and as he had a perfect right to do. It is very likely that, on account of his position in the House, he got the appointment when others would not. My friend says, "Is it not very extraordinary that you should have got it, you being a barrister practising at those sessions ?" Not at all. Mr. Seymour has instanced other cases of the same kind. Mr. Seymour's predecessor had been appointed from the same sessions. Then my friend says, "Were there not other gentlemen of longer standing and of larger practice than you ?" "Yes," says Mr. Seymour, "of longer standing and of larger practice in civil business ; but my experience has been that persons who have been in good criminal business have been supposed to be more fit for such an office." Then my friend says, "How did you get your silk gown ?" Mr. Seymour says, "I first applied for the coif ; it was understood that no more serjeants were to be made, and my application for the coif was postponed. I afterwards applied for a silk gown, and that rank was conferred upon me at the same time that it was given to several other gentlemen." Who among those gentlemen was better entitled to a silk gown than Mr. Seymour ? Mr. Seymour says, "My business at that time was equal to that of any of those gentlemen." What is there in Mr. Seymour's appointment from which you can justly infer corruption ? Do you infer corruption from the fact that the Lord Chancellor, when he was bestowing the rank of Queen's Counsel on

a number of gentlemen who were applicants for that distinction, gave it also to Mr. Seymour, who was as much entitled to it as any of them by his standing and his practice? What has there been in Mr. Seymour's conduct to palliate in the slightest degree the abominable language in which this writer has thought proper to indulge? Remember, this is not an article written in the heat or excitement of the moment; it is a deliberate composition, published in a magazine addressed to the profession of the law, and intended to be kept as long as law books are preserved; and it will be appealed to and resorted to as a book of reference as long as the book lasts. In that respect it differs from a newspaper or any ephemeral publication. It does not profess to be a comment upon the conduct of the Bar generally, or to discuss the propriety of altering the arrangements with reference to the admission of persons as barristers, or the supervision and control which should be exercised over them, but it is headed on every page, "William Digby Seymour, Esq., Q.C., M.P." What is it but a most gross attack on Mr. Seymour throughout, the general words which you find at the beginning being only intended to pave the way for that which comes afterwards? The attack upon Mr. Seymour is personal and specific. There can be no doubt as to the language that is used. I do not say one word against the Benchers of the Middle Temple; I do not complain of them for having instituted the inquiry, nor do I complain of the manner in which that inquiry was conducted; but I say that those gentlemen having investigated the charges which were brought against Mr. Seymour, and Mr. Seymour having been called on to account for his conduct years before, when he had been connected with a company with which he had, at the time of the investigation, long ceased to be connected, and the charges having been declared not proved, the animus of the writer of this article is apparent, when he comes forward, and not only reiterates the charges before made, but does so with a sharper and more envenomed sting; and follows that up by another publication in the month of August, after the action has been brought, in which he says, in effect, "Though the Benchers have acquitted you, I do not; I have read your own evidence and your own statement, and, in my judgment, that evidence and that statement do not amount to a defence of the allegations." These charges, therefore, are repeated after they have been investigated by the proper tribunal; they are persevered in up to the time when the action is brought, and they are persevered in afterwards in a second publication; nay, they are persevered in now indirectly, and so far as they can be, in this court. I ask you, then, what damages

you will give to Mr. Seymour ; because this action is virtually undefended ? Just consider what the effect of your verdict will be. Here is an indictment, or that which is equivalent to an indictment, against Mr. Seymour, which will stand as long as this book lasts. Mr. Seymour has brought an action against the publisher, who has not dared to plead that any one statement in it is true. The very first time that Mr. Seymour has an opportunity of bringing his case before a jury, the defendant does not dare justify what is here said, and so, in effect, withdraws the question from the jury. The amount of compensation that you give in this case will be for ever deemed to be a test of your appreciation of the character and conduct of Mr. Seymour, attacked and persecuted as he has been. I present him to you confidently as a persecuted man. He happened to become involved, years ago, in transactions, in which, I agree, no man ought to involve himself, much less a barrister ; he afterwards honourably paid £20,000 of his debts, but was not able to pay the rest ; and then having withdrawn from those speculations in which he had formerly been engaged, and having devoted himself to his profession, in which he reasonably hoped to have a prosperous career, these charges are all kept in the background, until he has obtained in the proper and regular course that rank at the bar which every man hopes to attain sooner or later ; then, and not till then, are these abominable charges brought against him ; he is subjected to an ordeal to which no man at the bar has ever before been subjected, and acquitted after a long and searching investigation ; and then, after that is all over and done, the writer of this article thinks proper, not only to rake everything up again in this book, but to say in words which cannot be mistaken, that Mr. Seymour is one of the "black sheep" of the law, and that he ought to have been disbarred.

Gentlemen, I ask, What damages will you give to Mr. Seymour ? I present him to you as a persecuted man. He got into Parliament, and by that influence which, I say, he fairly possessed, he obtained his Recordership. He has been in that way successful, and on that very account he has been persecuted. My friend will have an opportunity of addressing you last ; do not let him lead you aside from the real question here. The real question is not whether every statement which Mr. Seymour made to the electors at Southampton was true or not. Let my friend say whether he can explain away the language which is here used. The only contention that my friend can properly make is, that this is no libel at all ; for that is the only issue here. My friend must say that this article is not defama-

tory—he must say that it does not mean Mr. Seymour, or that, if it does, it is only a fair comment on the conduct of a public man. No doubt the public conduct of a public man may fairly be criticised, but the law says you shall not attack the private character of any one. What pretence is there for saying that this is nothing but a fair comment on the conduct of a public man? Is it fair to say of a man, that he is a “black sheep,” “an Irish blackguard,” and that he is “fertile in fraud”? To call that nothing more than fair and legitimate comment, is to ignore altogether the meaning of the English language. Do not let my friend lead you away from the real issue, which is, Is this a libel defamatory of Mr. Seymour? If it be, then there is no justification; and there being no justification, I ask you for such a verdict as will mark your sense of the injury Mr. Seymour has sustained.

Mr. SERJEANT SHEE:—May it please your Lordship, Gentlemen of the jury, you have heard a great deal, in the course of this cause, of the jealousies which are said to exist in our profession, but neither you, I think, nor any of my learned friends by whom the court is crowded, will be inclined to consider me an object of jealousy, or much envy me the task which I am now called upon to go through. It is a task which, if I could have done so with any degree of propriety, I should have been only too glad to have escaped. I declined to accept it, until I had satisfied myself, by a careful perusal of the book which Mr. Seymour has published, and which I had not before seen, that I could not, practising as I do before my lord, and as senior member of the Common Law Bar, refuse my services to Mr. Butterworth. I should not have been justified in declining to do that which every one of my learned friends would have regretted to have been obliged to undertake. Having undertaken it, I have the satisfaction of knowing that I am counsel for an honourable and respectable man, who desires to be defended by none but honourable and respectable means. Whether Mr. Seymour followed the advice which, relying, as he well might, on the professional friendship or acquaintance, the *necessitudo sortis*, which exists amongst us, he four or five years ago asked and obtained of me, I have not, and never have had, the means of knowing; but I must do him the justice to say, my impression at the time was, that he intended to follow it. If he had consulted me before he brought this action, I should have endeavoured to dissuade him from bringing it, and for this reason—it affords him no fair opportunity of clearing his character from the imputations by which it has, unfortunately, become stained, and no

opportunity to Mr. Butterworth, if so disposed, which he is not, of establishing their truth.

Gentlemen, the contents of the libel set out upon this record are such as to give to any person desirous of making a long oration about everything and everybody, abundant opportunity of self-indulgence. The conduct of Mr. Seymour five, seven, ten years ago, as chairman of the Waller Gold Mining Company; the honour and independence of the Bar, and the conduct to Mr. Seymour of an important subdivision of it, the Northern Circuit; the jurisdiction and duties of the Benchers of the Inns of Court, and the manner in which the Benchers of the Middle Temple have administered to Mr. Seymour the half-public half-private justice which they dispense; the motives and the objects with which the minor patronage of the law is bestowed by the Home Secretary, and the higher patronage and honours of the law by the Lord Chancellor; the representation of the people in the House of Commons by gentlemen of the long robe; the character and respectability of Parliament itself, are topics, none of which, with a little skilful handling, could be deemed irrelevant to the questions, extended by a long, loose, unpointed declaration, and left wide by the plea upon this record.

I cannot undertake to steer absolutely clear of any of these topics, but I undertake to keep steadily in view, throughout the whole of the observations which it will be my duty to address to you, what I have ever considered to be a golden rule for the guidance of an advocate for the defendant in a case of libel not justified upon the record:—vindicate your own client if you can, on grounds known to the law, and to the just and right feelings of honourable and sensible men, but do not unnecessarily attack the plaintiff. Mr. Seymour, gentlemen, may rest assured that no shaft shall be hurled by me against him, which he, by bringing this action, has not forced Mr. Butterworth to take up, and hand to me for his defence.

Before I proceed to address myself to the substance of the article which is complained of by my learned friend, and to his observations upon it, allow me for a moment to call your attention to the position and character of the defendant, the plaintiff, and the other persons who are mentioned in the record. The defendant, to begin with, is one of a firm of law-publishers, as eminent as any in the city of London; he is a gentleman of high character and respectability, a man of property, perfectly responsible, and perfectly competent to meet any claim which may be made upon him. I do not understand what my learned friend means by saying that we have erred in not proclaiming who the individual is who wrote this article. Do we

ever hear any such proclamation made in cases of libel? Hardly ever! It is enough that the man who stands before the jury to answer for what he has done—the thing done and complained of not being the writing of the article, but the printing and publishing of it—enough for every purpose of justice and of fairness between man and man, that he should be a responsible person in a position to meet any damages which a jury may think right to give; and there is no man in this metropolis, as Mr. Seymour well knew when he brought this action, better able to bear the brunt of it, than the gentleman who is the defendant upon this record.

Gentlemen, the Inns of Court, as you may probably know, are voluntary societies, wholly independent of the Crown and the Government of the country, which possess the privilege of conferring on young men, who have been for a certain number of years (I think it is now three) regular frequenters in term-time of their public hall, who have attended a certain number of lectures or submitted to an examination as to their professional attainments, the right of practising as barristers. The governing body of these societies are called Benchers; they are always men of considerable standing at the bar, and almost always of the rank of Queen's Counsel. The discipline maintained and enforced by them is of the gentlest, the most considerate, the most indulgent character. Knowing, as they well do, that the people of this country of every grade look to our profession as the means of raising their children, whatever their original condition, to social honour and distinction, and count, with patriotic and truly popular pride, in the House of Lords, the coronets which were won by the light of the midnight oil in the study of the noblest of all human sciences—the jurisprudence of a free people; the Benchers of the four Inns of Court admit to their societies the sons of gentlemen of the highest rank, of dignified and hard-working clergymen, of eminent solicitors, of prosperous merchants, of respectable farmers, shopkeepers, and even mechanics, on the easiest possible terms, and on a footing of perfect equality. When once they become members of these societies, nothing is required of them but that they shall conduct themselves as gentlemen—as gentlemen in the best sense of that word—that is, as men of honour and integrity. If they fail in that important particular, they are liable to have their conduct inquired into, and to be privately or publicly reprimanded; they are liable also, subject to an appeal against a reprimand, or against the heavier sentence, to be deprived of the degree which the society has conferred. And it is quite right they should be so liable. According to the usages of this country, matters of the deepest moment, affecting

the honour of families, interests the dearest that can be conceived, are by the subjects of the Queen, of every class, entrusted, with entire confidence, to the members of the Bar, in full reliance upon the certificate of character conferred upon them, with the degree of barrister, by the Inns of Court. It is supposed by the people of this country, and truly supposed,—believed, and believed with good grounds for the belief,—that the body of the Bar, from whom the judges of the land are selected, are free from all suspicion upon their honour, and that it can only be in an exceptional case, in one instance out of many hundreds, that a barrister can be reasonably suspected of having failed in that common and ordinary duty which is expected of the members of every respectable society—that is, that he should behave like a man of honour and a gentleman. The case of Mr. Seymour has created an impression, that the jurisdiction exercised by the Benchers of the Inns of Court in cases such as those relating to Mr. Seymour's conduct, ought to be entrusted to a committee or council of all the Inns of Court, so that the Benchers of no one Inn should be subject to the responsibility of too great severity, or, what is almost as bad, too great lenity in dealing with charges so serious. Whether that would be, as many think, an improvement, we are not here to inquire. Hitherto, the jurisdiction exercised by the Benchers of the Inns of Court over the members of their societies, has given entire satisfaction to the vast majority of the profession, for this reason; it has been generous, tolerant, and just, administered on all occasions with an earnest desire to take a liberal view of anything that may have been done amiss, and to save the character and the means of livelihood of those whose conduct has become the subject of inquiry.

The plaintiff, Mr. Seymour, appears to have been born in an honourable and respectable station. He has had the great advantage which I remember to have been described by Mr. Burke, of having never seen anything mean, low, or unworthy during his infancy and childhood. He is the son of a respectable clergyman of the Irish Established Church—one of a body of whom I may be permitted to observe—knowing them well—that a higher class of gentlemen does not exist in the United Kingdom. He received the best possible education at Trinity College, Dublin; and he came to England with every recommendation in his favour. At the age of about twenty-one he became a member of the Society of the Middle Temple;—and here I may say that during the long time that I have been at the bar, I have never known a single instance of a complaint of injustice or of hardship on the part of the Benchers of

that Inn to any member of the profession. He became a member of that society—submitted himself to its rules and to the jurisdiction of its governing body. In due time he was called to the bar, and joined, at the age of twenty-four, the Northern Circuit. He appears to have been admitted to the Bar Mess of that Circuit without the smallest objection being made to him. There could be none. No young man of his age—just admitted to the bar—finds the least difficulty in joining the Bar Mess of any Circuit. We admit such men as a matter of course. If a man has been many years buffeting about in other pursuits, it becomes necessary that we should know something about him ; but a young man—twenty-four years of age—just called to the bar, joins the Northern, or the Home, or the Western, or any other Circuit Mess on a mere introduction, and is received in the friendliest possible way.

When I come to notice the details of the article complained of, you will be enabled to judge what the difference is between the reception of a Scotchman, an Irishman, and an Englishman. Mr. Seymour became a member of the Northern Circuit—a Circuit which has always numbered among its members a large portion of the most honourable, the most learned, the most eloquent, and in all respects the most distinguished members of our profession. At that time at the head of the Northern Circuit were gentlemen whose names it is enough to mention to satisfy you that he could not have joined a society in which he had a greater reason to expect justice. I will mention first a learned friend of mine, not now present, who, though he has not been raised to the Bench, might have been raised to it at any time during the last fifteen years with the assent and approval of the whole body of the profession—my learned friend, Mr. Knowles—a man as incapable of doing an injustice, or of acting unkindly, as any person in the world. Mr. Knowles, the late Mr. Matthew Talbot Baines, Sir David Dundas, and Mr. (now Baron) Martin, were the leaders of that Circuit, and the leaders of a Circuit, to a great extent, give a tone to the Circuit. Mr. Seymour had the advantage of joining the Northern Circuit when those gentlemen were the leaders of it. He went the Durham Sessions, and did his best, as all young men do, to get on ; and he appears to have succeeded to some considerable extent at those sessions. In the year 1852 he was returned to Parliament, at the comparatively early age—for a barrister—of thirty, as one of the representatives for the borough of Sunderland. When he got into Parliament he took the liberal side in politics, and generally voted with the party which was in power,—the

liberal party. In 1852-3, soon after he had become a Member of Parliament, he seems, unfortunately, to have connected himself with stock-jobbing transactions. He became associated, as chairman, with a body of swindlers calling themselves the directors of the Waller Gold Mining Company. This appears by his evidence to-day, and by the letters which are set out as part of this libel, and he takes credit to himself for having, as chairman of that company, suddenly ascertained that his co-directors were a set of swindlers, and for having undertaken all their liabilities to an amount, as he says, of £40,000,—£20,000 of which he has paid. He became also, unfortunately, connected with a printing scheme, which is mentioned in the article complained of, and in his protest published by him in the *Times* newspaper to the Benchers of the Middle Temple, dated the 3rd of February. It appears from that protest that he had been charged by a Mr. Parker, a respectable solicitor, with having misappropriated a sum of £500 which had been handed to him for a particular purpose; and it is plain—whatever attention he may have paid to his profession and to the modest emoluments which he obtained at the Durham and Northumberland Sessions—that from the date at which he became a Member of Parliament until the end of the year 1854, when he was made Recorder of Newcastle, his time was not employed as the time of the honourable men who were members of his Circuit and members of the Bar generally was employed, but in an endeavour to get rapidly rich by stock-jobbing transactions, and that just at the time when he was thus mixed up with those who deserved no better name than that of swindlers; in the month of December, 1854, in the eighth year of his standing at the bar, he was appointed Recorder of Newcastle-upon-Tyne—one of the largest of our commercial towns—in which the jurisdiction of the Recorder, both criminal and civil, is very extensive. On his appointment to that office he lost his seat, and he remained out of Parliament until the year 1859, during which time all his affairs became the subject of that description of inquiry which takes place when a man becomes a bankrupt. He took the benefit of the Private Arrangement Act, which, before gentlemen not traders could be bankrupts, used to be called the “Gentleman’s Act.” In the course of his endeavour to obtain the benefit of that Act, he was opposed by the solicitor whom I have mentioned; and it appears from the papers now before you,—and which he himself brings before you—that he was opposed on the ground that he had obtained from him the sum of £500 fraudulently, and refused to return it. That was his position. It appears from

his speech at Southampton that this was perfectly well known—generally known to the members of his profession. It was known also, you may depend upon it, in commercial circles in the city; notwithstanding which—to the astonishment of every one—on the 22nd of February, 1861, he was gazetted as Queen's Counsel, in company with some ten or twelve gentlemen upon whose honour and character there never had been a stain, who were beloved and respected by every member of the profession, and almost every one of whom might have been appointed to the judicial bench without a murmur on the part of any one who was left behind.

Gentlemen, my learned friend, Mr. Lush, complains that the charges which were ultimately brought before the Benchers of the Middle Temple against Mr. Seymour, had not been brought forward at an earlier period. I agree with my learned friend that the honour and character of the junior members of the Bar is a matter of the highest concern. It is of the last importance that every member of the Bar should be a man of honour and integrity; but it is not so mischievous that a junior member of the Bar, without position or professional rank, should be detected in conduct unworthy of a gentleman and a man of honour, as it would be in the case of one of the judges of the land, or in the case of a gentleman who has been appointed one of Her Majesty's Counsel, with a right, not a strict but a conventional right, and one which without good cause is never disputed, to become a Benchers of his Inn. For three years, from the time when Mr. Seymour took the benefit of the Gentleman's Act until the time when Lord Chancellor Campbell thought right to make him a Queen's Counsel, rumours most injurious to his honour and character had been current in the profession. My learned friend says, "Why were these charges not brought forward before?" Nothing, with certainty, was known about them until Mr. Seymour took the benefit of the Gentleman's Act; but when he did take the benefit of the Gentleman's Act then it became known, not with perfect accuracy, but with a tolerable degree of precision, what the nature of the charges against him was. His rank as Queen's Counsel gave him a position on his Circuit, and a position here in London, and a position in his Inn, which no man ought to hold whose character is not free from suspicion; and accordingly the Benchers of his Inn, having been informed of circumstances which threw a grave shade upon the antecedents of Mr. Seymour, thought it necessary to call him before them to explain those circumstances. Mr. Seymour submitted himself to that

inquiry ; and the result of that inquiry, after about fifteen meetings, was the judgment which you have heard read, and which I will presently read to you again. The Benchers, having come to the conclusion that the principal charges were not proved, although Mr. Seymour's conduct had been such as to deserve a severe censure, had two courses to pursue ; they might reprimand him in private, or reprimand him in public ; they might, as they did, read the sentence to him in their parliament chamber, none but the Benchers being present, or they might, if they thought proper, screen and make public the judgment at which they had arrived ; they thought proper, in mercy to him, not to screen their judgment. They thought it would be better (it was manifestly better for him) that a general impression should prevail that his conduct had brought upon him their censure, but that it had not been such as to justify his being disbarred ; and that under the influence of the admonition which that censure conveyed, he should have an opportunity of deserving, by conducting himself for the future as an honest and honourable man, the position in the profession which he had well nigh forfeited. On the 23rd of January, the Benchers having a few days before read their sentence to Mr. Seymour, sent him the sentence in writing, accompanied by all the evidence upon which it was founded. When that sentence was read to him he had expressed himself in the terms which you have heard him state ; they were terms intimating no dissatisfaction with the conduct of the Benchers towards him. It had, in fact, not been severe ; and he had from the 23rd of January until the 3rd of February to consider what he would do under the circumstances in which he was placed. No one can doubt that to a sensitive and honourable mind such a censure must have been a cause of very great unhappiness ; he could not but feel that men, who could have no possible motive for doing him an injustice, had taken, if their sentence expressed their real opinions, a course in respect of him much more lenient than they could possibly justify ; he was aware that whatever little irregularity had taken place in the course of the inquiry, no substantial irregularity had been committed, because the evidence which was taken every day that Mr. Seymour attended before the Benchers was communicated to him in print, as well as to all the Benchers of the Society ; and he cannot have supposed, and he did not, in fact, suppose, that any member of that Inn would have taken part in the judgment which was pronounced upon him without having fully informed himself of all the evidence which had been produced against him, and of the evidence which had been adduced in his favour. He had from

the 23rd of January till the 3rd of February to consider what he should do. Mr. Seymour tells us that he was advised not to appeal to the Judges. Whoever gave him that advice, gave him, in my opinion, very bad advice. I am not aware that the Judges, who are, *ex officio*, Visitors of the Inns of Court, would have refused to entertain his appeal; if they did refuse we shall know it before this cause is over.

LORD CHIEF JUSTICE COCKBURN :—There is no ground at present for saying that the Judges refused to entertain an appeal.

Mr. SERJEANT SHEE :—None, my lord. And I say, gentlemen, that if they did refuse to entertain it, I am quite certain it will be known before this cause is over. Mr. Seymour states that he was advised that he could not appeal. I think that no single member of the Bar should have undertaken to give that advice. What! That a censure dishonouring to a member of the Bar, a Queen's Counsel, and a Judge of the land, should be passed by the Benchers of an Inn of Court, and that he should have no appeal against it to the Visitors of the Society! that it should be screened in the Society's hall so as to give it (for that is the inevitable result) a certainty of publicity in the public papers, and that the member of the Inn so disgraced, it may be ruined, should have no opportunity of redress! I believe it to be wholly impossible. I do not know who gave Mr. Seymour that advice, but he was a bold man who did it; and I believe that any one of my friends who hear me now would have told Mr. Seymour, if he had thought it right to consult him, "Do not lose a moment, write to the Lord Chief Justice of the Court of Queen's Bench, the highest in rank and in authority of Her Majesty's Judges, and ask him to cause the matter to be investigated." Mr. Seymour did not take that course; and I grieve now to have to call your attention to the course which he preferred to it. Mr. Seymour's course was one which, when fairly considered, as I have no doubt it will be before this cause comes to an end, leaves him no pretence whatever for bringing this action. He went, on the 4th of February, into the market-place of Southampton; he had assembled there to hear him the electors and non-electors of the borough; he there made his appeal to them against the Benchers of the Inn to which he belonged; and that he then deliberately intended to withdraw a matter which related to his honour and character from its proper tribunal to the tribunal of the public, which never could fairly decide upon it, is plain from the last words of the speech which Mr. Seymour delivered upon that occasion, and which is set out upon this record :—

"Now, gentlemen," he said, "I have done. I have gone over the various points which fairly, or unfairly, have been pressed upon your attention, and upon which I have come down, though late, to Southampton in the honest hope that I might receive from you a verdict such as would tell at once to the public that, whatever cruelty I have encountered elsewhere, however the dirty fingers of certain members of my own profession have been employed in raking up the scandal of the past for the purpose of dragging up something to damage my repute; yet that you sympathized with your representative, that you accepted the result, that you saw me still a member of an honourable profession in spite of malice and jealousy, and of political hate, still holding the rank which by such hard struggles I attained, and that you would, by your determination, and by your pronounced opinion to-night, trample for ever upon this cruel attempt to call public attention to a matter which hitherto, at least, has been confined to a more limited circle, and has never yet been brought forth and laid before the glare of public day."

He appealed to the public through his friends and supporters at Southampton. He must have known perfectly well, considering the position he then held at the Bar, and in the House of Commons, that every word he said would be taken down by reporters, and that it would appear the next day in the *Times* newspaper, and he does not take exception to one word in the report which was furnished to the columns of that journal. We have him then appealing to the public against the Benchers of his Inn of Court, the jurisdiction to which he had submitted himself when he became a member of that Society, the jurisdiction which he knew to have been exercised in his case with very great leniency and forbearance. Gentlemen, he was not content with appealing to the people at Southampton, and to the public generally, but he took upon himself on that occasion to attack the Benchers of his Inn. "I was," he said, "upon fifteen different occasions before the Benchers of my Inn, and I stood practically before fifteen different tribunals, because upon no two occasions were my judges the same. The examinations were conducted within closed doors. I would to God they had been conducted in the broad light of day, and before the face of my constituents and the country; they were conducted by men sitting down after dinner, varying in their numbers and attendance, and sometimes postponing the inquiry upon the most trivial grounds." So that he went down to Southampton with the deliberate purpose of attacking gentlemen of the highest honour and character, as if they had displayed the same feeling which he charges upon the members of his Circuit, and had determined to pursue him, through motives of jealousy, and to work his destruction.

Now, gentlemen, let us see (because it is right it should be known) who the members of the Bench were. The members of the Bench who took part in that inquiry were Sir Laurence Peel, the late Chief Justice of Bengal; Mr. Greenwood, a Queen's Counsel, and solicitor to the Treasury; Mr. Bagshawe, a Queen's Counsel at the Chancery Bar, now one of the County Court Judges in Wales; Mr. Karslake, a Queen's Counsel and one of the leaders of the Western Circuit; Mr. Anderson, a Queen's Counsel, a member of the Chancery Bar going no Circuit; Sir William Alexander, a Queen's Counsel, the Attorney-General to the Prince of Wales, and one of the leaders of the Oxford Circuit; Mr. O'Malley, a Queen's Counsel, and one of the leaders of the Norfolk Circuit; Mr. Thomas Chambers, a Queen's Counsel and Common Serjeant of the City of London; Mr. Hawkins, a Queen's Counsel and one of the leaders of the Home Circuit; Mr. Green, a Queen's Counsel, and a member of the Chancery Bar; Sir Frederick Slade, a Queen's Counsel, and one of the leaders of the Western Circuit; the present Queen's Advocate, then Dr. Phillimore; Mr. Mills, a Queen's Counsel, and one of the leaders of the Norfolk Circuit; Mr. Coleridge, a Queen's Counsel, and one of the leaders of the Western Circuit; Mr. Rodwell, a Queen's Counsel who practises at the Parliamentary Bar, and a member of the Home Circuit; Mr. Montagu Smith, a Queen's Counsel, and the leader of the Western Circuit; Mr. Bovill, a Queen's Counsel, and one of the leaders of the Home Circuit; Mr. Monk, a Queen's Counsel, and one of the leaders of the Northern Circuit; Mr. Hoggins, a Queen's Counsel, and one of the leaders of the Northern Circuit; and my learned friend, Mr. Knowles, a Queen's Counsel, who had formerly been a member of the Northern Circuit, but who has thought right to retire from the practice of his profession on the Northern Circuit, having long been the leader of that Circuit, and in very large business. There are two other gentlemen, one a conveyancer, Mr. Hopley White; and another gentleman, Mr. Reynolds, who has retired from practising the profession. Such was the tribunal before which Mr. Seymour appeared, and I ask you if it would be possible to assemble the same number of gentlemen from any profession, or from any number of professions, who would be more likely to arrive at a fair and just conclusion on the conduct of a member of a society to which they belonged than these gentlemen would be. Mr. Seymour was not content with appealing against them in the way I have just read to you from his speech, but when they were forced by his appeal to the public to screen their judgment, that

is, to put it up in the Hall, he sent a letter to them which, he says, was written on the 3rd of February, and which he calls a protest, and that letter or protest he afterwards sent to the *Times* newspaper, in which journal it appeared. Let us see what he says in that letter respecting the gentlemen who had heard his case as Benchers of his Inn :—

“There is another subject to which I feel bound to call your attention. You have held fifteen meetings, and in no single instance has your parliament been composed a second time of the same members as any previous parliament. In point of fact, therefore, I have been tried before fifteen different tribunals. Your numbers have been equally irregular, varying from a maximum of eighteen to a minimum of seven. One of your number first attended at the fifth meeting, one first at the sixth, two at the ninth, two at the tenth, and one at the thirteenth ! The following is an analysis of the attendance of all the Benchers :—Two attended fifteen meetings, two attended fourteen, one attended twelve, two attended eleven, one attended ten, two attended nine, two attended eight, two attended seven, three attended six, two attended five, one attended four, two attended three, two attended two, and two attended one. Here is a remarkable disregard both of the spirit and letter of the wise rule of the Society which requires the attendance of the same numbers on every adjourned hearing of an inquiry into an accusation against a barrister.”

Are those fit observations for a barrister of an Inn of Court to make, and to make public by sending them to the *Times* newspaper, unless he intended to provoke a full discussion by the public in the public press of all the matters to which those observations related ? Was it right of Mr. Seymour, when he might have appealed to the Judges, or asked the Judges to entertain his appeal against the reprimand of the Bench, thus to attack the Benchers before the public ? I apprehend not ; but if he thought right to do so it is not reasonable of him to complain of any of the consequences which have resulted from it.

Let us now see what the sentence pronounced upon him by the Benchers was. It is a sentence which gives rise to questions of very serious importance,—questions in which the conduct of the Benchers is as much involved as the conduct of Mr. Seymour.

“The Masters of the Bench have carefully considered the voluminous evidence and documents which have been brought before them, and have come to the conclusion that the charges in the cases of ‘Parker,’ ‘Coutts,’ and ‘Robertson,’ respectively, are not proved, and that the charge of a proposal to hold briefs for an attorney in

liquidation of his costs payable by you, is proved. The facts and circumstances which are disclosed, fully satisfy the Masters of the Bench of the necessity for this inquiry, and they regret to add that they cannot accompany their intimation to you of their decision on the three charges first named with any declaration that your conduct is not liable to censure; on the contrary, they have the painful duty to perform of stating to you that they find much worthy of severe condemnation even on the most favourable construction of your actions. That in Parker's case, on your own statement of your conduct, evidence appears of a want of open dealing towards, and of concealment from, Mr. Parker. Mr. Parker's agreement with you on your own version of it, was inconsistent with your substitution of your *credit* for the money you undertook to add to his own, and with the use of his money for any purpose unconnected with the printing scheme. The breach of your agreement in these two respects was not communicated to Mr. Parker, whose consent alone could have justified the course to which you actually resorted. The Masters of the Bench are also under the painful necessity of declaring their opinion, that the settlement of Mr. Parker's action, while the charges of fraud included in it were, in the opinion of the Bench, *not only not withdrawn*, but were strongly re-asserted, as it was conduct calculated to destroy character by exciting suspicions that charges which were not boldly met could not be gainsaid, was an arrangement to which a right-minded man, even in the hour of heavy pecuniary distress, would not have submitted. They are compelled to add that no solid ground presents itself on the evidence in justification of the affidavit which was made by you for the purpose of postponing the trial of the action in question. With respect to Captain Robertson's case, there is found in your statements at various times, in relation to that case, a want of consistency which indicates some recklessness of assertion. Your assertion, so often repeated, that you had generously taken upon yourself very large liabilities which did not in any way belong to you, as you assert yourself to have been totally unconnected with, and innocent of, the transaction termed 'rigging the market,' is at variance with the statement in your letter to Mr. Lefroy, that the debt was as much Captain Robertson's as your own. The Masters of the Bench are unable to reconcile an act which, according to your version of it, would have been one of romantic generosity and self-devotion (scarcely consistent with your duties to others and with the reasonable claims of justice) with other portions of the evidence, and with the ordinary presumptions which arise from your conduct as disclosed throughout these painful transactions. The fourth charge relates to a matter of a different character. The Masters of the Bench are glad to find that it is not justified by you, but the grounds on which you attempted to palliate your conduct are not satisfactory to them. Your proposal was one most improper from a barrister to an attorney, and invited a breach of duty on the

part of the attorney ; a client would never be likely to suspect that his attorney, from secret motives of interest, was selecting an advocate for him whom otherwise he might not have chosen. It is conduct, therefore, promoting deception, and likely to generate suspicion where confidence should prevail. If such a practice were tolerated, it would lower the character and honour of both branches of the profession, and would be injurious to the public, not only by reason of such debasement, but also by its tendency to introduce into, or maintain in, the practice of their profession men more distinguished by the pliancy of their principles than by the gifts of nature, improved by an industrious and honest pursuit of eminence by honourable means."

Gentlemen, do not deceive yourselves—what I have now read to you is the only part of what Mr. Seymour calls the libel which gives him the smallest pain. That is the real libel. If Mr. Seymour had not thought proper to make it public, Mr. Butterworth might not perhaps strictly have had a right to print and publish it. That is the libel. Take that out of the article, and there is nothing in it that would do serious damage, or perhaps any damage, to a gentleman in Mr. Seymour's position.

Now let us see what observations have been made by Mr. Seymour's Counsel upon that libel. I cannot but regret (and I say it with the most unaffected respect for my learned friend Mr. Lush) the sort of apology which he has made for Mr. Seymour in respect of that last charge, the charge of offering to hold briefs for an attorney in any Court in order to discharge an amount of costs due to him. My learned friend seems to think that although it was a breach of etiquette, it may be justified on a principle of honesty.

LORD CHIEF JUSTICE COCKBURN :—No—not justified—palliated.

Mr. SERJEANT SHEE :—Palliated, then.

LORD CHIEF JUSTICE COCKBURN :—I should have been very sorry to hear Mr. Lush say that it was justified.

Mr. LUSH :—I never said that it was.

Mr. SERJEANT SHEE :—Then I beg my friend's pardon—that it was palliated by a principle of honesty. I think, gentlemen, that you will be of opinion, for the reasons given by the Masters of the Bench, that it is conduct which is wholly inexcusable. I cannot avoid adding, that even feelings of honesty need not have led Mr. Seymour to that breach of professional etiquette. Mr. Seymour was at that time, according to his own statement, a prosperous member of the Bar. Surely he might have paid the costs out of fees received from other attorneys besides Mr. Brown. There was no difficulty in his doing that. I will not dwell longer upon that part of the sentence

Mr. Butterworth's magazine to re-open a matter so intimately connected as this was with the honour and character of the Bar.

Gentlemen, there is one other observation which my friend Mr. Lush made, to which I venture humbly to take exception. My learned friend, Mr. Lush, without distinctly saying so, seemed to suggest that a distinction ought to have been made by the Benchers of the Middle Temple between Mr. Seymour's professional and his commercial character, and he seemed to think (though he did not distinctly say) that they had stretched a point when, looking beyond the professional character and conduct of Mr. Seymour, they inquired into his commercial transactions. Gentlemen, I apprehend that that is a great mistake. It is the duty of the Benchers of the Inns of Court to take care that the Degree which they confer shall not be used as a credential by a professional impostor to obtain the confidence of the public. If they find that a man after he has been called to the Bar has disgraced himself by conduct in other pursuits, surely they ought not to allow him to have that opportunity of doing mischief which his position as a barrister gives. Surely, when the public know or believe that no one is allowed to be a member of an Inn of Court, or a member of the profession of the Bar, who is proved to have been guilty of dishonourable conduct—and dishonourable conduct is charged against one of the members of their Inn—it is their duty to take cognizance of the charge, whether it relates to professional matters, or matters unconnected with the profession. I apprehend it was the duty of the Benchers of this Inn of Court, when these matters came before them, to inquire into all the circumstances of the case, and to ascertain, aye or no, whether Mr. Seymour had been guilty of that which had been charged against him.

Let us now, gentlemen, proceed and see what the defendant's course is. Not justifying the libel, because it would have been impossible to justify this, the material part of the libel,—namely, the judgment pronounced by the Benchers,—he defends himself on the ground that the judgment of the Benchers was a fair matter of public discussion, and that it had been made public by Mr. Seymour himself. The writer of the second article read by my learned friend, says:—

“We shall place the article in question confidently in the hands of a jury, as a fair and reasonable comment on notorious facts, written with the same knowledge of the circumstances as the whole public possessed, mis-stating nothing, suppressing nothing, and consisting, in a great degree, of materials supplied by Mr. Digby Seymour himself.”

. Now, if the publication of this article is within the limits which are here laid down, I apprehend that the defendant is in law justified, and that you ought to say he is not guilty upon this record. If you should think that the article is not within those limits, that it does not relate entirely to matter which in its nature is a fit subject for public discussion, or matter made public by Mr. Seymour himself, you may have to consider to what damages Mr. Seymour is entitled; but if you are satisfied that the matters discussed are matters of public interest and importance, and that in discussing them Mr. Butterworth, or the gentleman who wrote this article, has not deviated from the fair path of public discussion to asperse Mr. Seymour's private character, then I apprehend Mr. Butterworth is entitled to your verdict, and, subject to anything my lord may tell you, I also submit to you, and to my lord, that if there be any matter treated of or dealt with in this article which is not in its nature public, but matter rather for a domestic forum, yet, if Mr. Seymour has made it public, if he has invited public discussion to it, the proprietor of the *LAW MAGAZINE* had a good right to discuss it, and cannot be made liable in damages for having done so.

Allow me, gentlemen, for a moment to call your attention to the general character of this magazine. It is confined entirely to matters of legal interest. You will see at a glance what the scope of the publication is. I will take the articles in the next preceding number, and the articles in the number complained of: "Sir John Patteson," (the late eminent Judge,) "International General Average," "Ancient Irish Conveyancing," "The Rights, Disabilities, and Usages of the Ancient English Peasantry," "Inner Temple Benchers," "Disbarment of Edwin J. James, Q.C.," "Sugden on Powers," "The Affair of the Trent," "Practice of the Divorce Court," "Disunion of the United States," "Right of Secession." Then the articles in this number are—"Holy Orders as Disqualifying for the House of Commons or the Bar," "International General Average," "The Rights, Disabilities, and Usages of the Ancient English Peasantry," "The Machinery of Legislation," "The Science of Civilization," "On Equitable Interests in Ships," "The Law of Judgments," "On Charitable Trusts," "On Insanity and Prodigality," "Decrees Nisi in Divorce," and then comes "Case of W. Digby Seymour, Q.C., M.P." You see, gentlemen, it is a magazine and review, which professes (and this is the twenty-fifth number of a new series, for I think it has been in existence for thirty years,) to discuss all questions interesting to the profession of the law, connected with the law of the land, the law of foreign countries, and

the law of nations, and before this number of it appeared, the conduct of an important branch of the profession, nay, of two most important branches of the profession, the conduct of the Benchers of the Middle Temple, and of that large and important subdivision of the Bar, the Northern Circuit, had been made the subject of public discussion and condemnation by Mr. Seymour himself, insomuch that the Benchers of the Middle Temple had been arraigned before the public as persons who had either done great injustice to Mr. Seymour, or great injustice to themselves, and to the profession of which they were members; it being broadly asserted in various public newspapers, and in other publications, that if the charges on which Mr. Seymour had been censured were true, and if that censure was deserved, the Benchers of the Middle Temple had not been true to their trust, and that they ought to have disbarred him.

Next, let us see what are the public questions involved in this inquiry, that we may be enabled to form a fair opinion of the manner in which they are discussed.

I submit to you that one of the public questions raised by the conduct of Mr. Seymour, and by the documents to which he had given publicity, was this—and it is a very serious one—Are the Benchers of the Inns of Court a body to which the discipline, the professional government, the supervision and correction of the members of the Bar can, with a due regard to its honour and the protection of the public from professional imposture, be safely entrusted? That was an important public question, raised by what had taken place in Mr. Seymour's case, and by the publicity which Mr. Seymour had given to it, and I am much afraid that there does exist a very strong opinion, that if that censure passed upon Mr. Digby Seymour was deserved, the Benchers of this Inn of Court faltered in the performance of their duty, and that they ought to have disbarred him. It is plain that such a question as that was a very fit and proper question for public discussion, and I much fear that, provided their censure was sincere and honest, there is reason for saying that the Benchers were misled, by pity for Mr. Seymour, from the course which they ought to have taken—that of disbarring him. Now that that is the impression which existed in the mind of the person who wrote this article seems to be perfectly clear, and it is one which he had, as I submit to you, a right to state, and a right to enforce by all fair arguments, abstaining, as it was his duty to abstain, from any observation which did not properly belong to the question, and any observation tending to impugn the private character either of the members of the Bench or of Mr. Seymour.

I will now request your attention to that part of the article which relates to that which I have called an important public question:

"It cannot be denied that the scandals which have lately been afloat concerning more than one well-known member of the Bar have shaken the public opinion, hitherto prevalent, in the honour and high tone of the profession. Scarcely had Mr. Edwin James vanished from the scene, when two other learned gentlemen, one of whom is a scholar and a genius, and the other, though neither of these, still a barrister in some practice, and lately elevated to the rank of Queen's Counsel, became the subjects of a notoriety, painful to themselves, and discreditable to the whole profession."

Then follows a long passage about the mischief which arises from allowing gentlemen to be called to the bar in order to obtain second-rate public offices, who do not possess sufficient legal knowledge to qualify them for practising at the bar. That has nothing to do with Mr. Seymour; it is, perhaps, an evil which would be best remedied by not appointing men to such offices until proof was given that they had something more than a mere nominal standing at the bar, and that they had made themselves acquainted with the principles and practice of their profession. Then, upon this first question, I do not find anything of any importance until we come to the close of the article, and there I find that the person who wrote it does plainly express an opinion, which he had a perfect right to do, and which is entertained by a great many besides himself, that if the censure was justified—if, mind—I do not pretend to say it was—Mr. Seymour ought to have been disbarred. He says:

"It is not our intention to enter into any consideration of the specific charges brought against Mr. Digby Seymour, because, like the rest of the public, we are not yet in possession of the means for deciding on them impartially, with a full knowledge of the facts. But when we consider that we have on the one hand the deliberate opinion of a number of honourable and distinguished men, who have gone fully into the case; and, on the other, the bare assertion of innocence by an interested person, who declines to take the plain course of publishing a complete statement of the circumstances—and that person one who publicly stated that the Benchers had given a verdict in his favour, when he held their condemnation in his hands—we cannot hesitate for a moment as to the verdict we must pronounce. Until Mr. Digby Seymour has shown to the public, by a full and ungarbled publication of the evidence given before the Benchers, that their judgment was unjust, we must continue to believe that it was delivered in accordance with the truth, and that the censure therein was merited."

Then he goes on to say, in another part:

"We observe that in the last epistle the writer expresses some regret that the editor who fell into this (to a layman) very natural mistake, had not violated the privilege of Parliament thereby, and thus afforded to Mr. Digby Seymour the opportunity of laying the whole matter before the House. But why wait for a breach of privilege? Honourable members have, before now, become the subjects of unjust suspicions, and have, thereupon, themselves moved the House for the appointment of a Select Committee of Inquiry, with the full conviction that they would thus clear their scutcheons of blot. If Mr. Seymour be indeed enrolled, as he assures us, among the army of martyrs, why does he not take the same simple and straightforward course? Or, if his native modesty prevent him from obtruding himself on Parliament, why should not some other M.P. clear the character of the House by moving for such a committee, and instituting such an inquiry? By all means let us have some investigation; let the chairman of the committee send for books, persons, and papers; let the members sift the whole matter to the bottom; and when Mr. Digby Seymour has come out of the scrutiny, not merely as white as wool, but with a refulgent crown of martyrdom to boot, let the House at once abolish the Benchers—and the Bar too, if it lists—and let it further transmit the sufferer's claims to the canonizing council which is shortly to assemble under his Holiness, in order that St. Seymour, of Sunderland and Southampton, may be duly added to the calendar. Let it not be supposed, however, that we are prepared to record any approval of the conduct of the Benchers. We have not the slightest doubt that they acted in this painful business with perfect integrity, and with the best intentions, but it is impossible to acquit them of foolishness and error. In the first place, we are clearly of opinion that if they considered Mr. Digby Seymour guilty of even one of the charges brought against him, (and they admit that they did so,) they were bound to have disbarred him. Censure, however abjectly received when it was pronounced, was no adequate punishment for such an offender. Very recently, an unknown member of the Bar has been expelled from its ranks for offences certainly not greater than the charge which the Benchers say was proved against Mr. Digby Seymour. Is it right the public should suppose that, while the whole severity of power is brought to bear against the weak, there is a dread of enforcing discipline in the case of a Member of Parliament and a Queen's Counsel? In the second place, it is quite clear that the judgment of the Benchers ought to have been screened immediately after it was pronounced. We cannot conceive what reason could be given for maintaining secrecy. And, thirdly, we are strongly of opinion that when Mr. Seymour challenged the publication of the evidence, it should at once have been given to the world. The honour of the Bar and the dignity of the Bench demanded such a course, and we deeply regret that ill-advised counsels to the contrary

have prevailed in the parliament chamber of the Inn. We cannot, however, concur in the idea that investigations before the Benchers into the conduct of every accused member of the Bar should necessarily be held in public. The adoption of such a rule would, we think, be a great evil. The jurisdiction of the Bench is exercised in what has been justly termed 'a domestic forum,' and the nature of such a tribunal is essentially different from that of an ordinary court of law. To parade questions of etiquette, and even of morality, before the public would be often unjust to the accused, and would add no security to the discipline of the profession. But we are alive to the mischief occasionally produced by the present practice, especially when an unscrupulous man makes capital out of the very privacy which has alone saved him from utter ruin. Perhaps it would be well to give to the accused in all cases the *option* of a public hearing. In the proposal which has been made for a conjoint committee or council of the four Inns, to conduct inquiries of this kind, and to administer the discipline of the Bar, we most entirely concur. Such a measure would reassure the public as well as the profession, and have a good moral effect; and, as the institution of such a body would be only following up the precedent already set by the establishment of the Council of Legal Education, which has worked admirably, we may hope that the Benchers will see the wisdom and expediency of making this step in advance without any further delay."

Gentlemen, I say that that part of the article at least is a discussion, and a very proper discussion, of the conduct of the Benchers. The object of it is to show that if they thought themselves justified in passing their censure, it was due to the profession and the public that they should disbar their offending member. It tends to show, no doubt, that they had taken, from the best and most honourable motives, a very lenient view of the case, and that the observations made upon their conduct by Mr. Seymour, at Southampton, and in the press, were wholly undeserved.

Gentlemen, the next question which is discussed in this article, is one, if possible, of still greater importance. I really do not know what public question, not involving national honour, or national disgrace, can be of more importance. People may entertain different opinions about it; but I submit, with the utmost confidence, to you, that it is a matter of great public interest and importance to ascertain; Whether the minor patronage of the law is honestly bestowed upon deserving men, or given away, as respects gentlemen of the long robe in Parliament, without inquiry as to personal and professional character, to obtain from them, or to secure from them, an obsequious and obscure adhesion to the Government of the day; and whether

is, to put it up in the Hall, he sent a letter to them which, he says, was written on the 3rd of February, and which he calls a protest, and that letter or protest he afterwards sent to the *Times* newspaper, in which journal it appeared. Let us see what he says in that letter respecting the gentlemen who had heard his case as Benchers of his Inn :—

“There is another subject to which I feel bound to call your attention. You have held fifteen meetings, and in no single instance has your parliament been composed a second time of the same members as any previous parliament. In point of fact, therefore, I have been tried before fifteen different tribunals. Your numbers have been equally irregular, varying from a maximum of eighteen to a minimum of seven. One of your number first attended at the fifth meeting, one first at the sixth, two at the ninth, two at the tenth, and one at the thirteenth ! The following is an analysis of the attendance of all the Benchers :—Two attended fifteen meetings, two attended fourteen, one attended twelve, two attended eleven, one attended ten, two attended nine, two attended eight, two attended seven, three attended six, two attended five, one attended four, two attended three, two attended two, and two attended one. Here is a remarkable disregard both of the spirit and letter of the wise rule of the Society which requires the attendance of the same numbers on every adjourned hearing of an inquiry into an accusation against a barrister.”

Are those fit observations for a barrister of an Inn of Court to make, and to make public by sending them to the *Times* newspaper, unless he intended to provoke a full discussion by the public in the public press of all the matters to which those observations related ? Was it right of Mr. Seymour, when he might have appealed to the Judges, or asked the Judges to entertain his appeal against the reprimand of the Bench, thus to attack the Benchers before the public ? I apprehend not ; but if he thought right to do so it is not reasonable of him to complain of any of the consequences which have resulted from it.

Let us now see what the sentence pronounced upon him by the Benchers was. It is a sentence which gives rise to questions of very serious importance,—questions in which the conduct of the Benchers is as much involved as the conduct of Mr. Seymour.

“The Masters of the Bench have carefully considered the voluminous evidence and documents which have been brought before them, and have come to the conclusion that the charges in the cases of ‘Parker,’ ‘Coutts,’ and ‘Robertson,’ respectively, are not proved, and that the charge of a proposal to hold briefs for an attorney in

liquidation of his costs payable by you, is proved. The facts and circumstances which are disclosed, fully satisfy the Masters of the Bench of the *necessity* for this inquiry, and they regret to add that they cannot accompany their intimation to you of their decision on the three charges first named with any declaration that your conduct is not liable to censure ; on the contrary, they have the painful duty to perform of stating to you that they find much worthy of severe condemnation even on the most favourable construction of your actions. That in Parker's case, on your own statement of your conduct, evidence appears of a want of open dealing towards, and of concealment from, Mr. Parker. Mr. Parker's agreement with you on your own version of it, was inconsistent with your substitution of your *credit* for the money you undertook to add to his own, and with the use of his money for any purpose unconnected with the printing scheme. The breach of your agreement in these two respects was not communicated to Mr. Parker, whose consent alone could have justified the course to which you actually resorted. The Masters of the Bench are also under the painful necessity of declaring their opinion, that the settlement of Mr. Parker's action, while the charges of fraud included in it were, in the opinion of the Bench, *not only not withdrawn*, but were strongly re-asserted, as it was conduct calculated to destroy character by exciting suspicions that charges which were not boldly met could not be gainsaid, was an arrangement to which a right-minded man, even in the hour of heavy pecuniary distress, would not have submitted. They are compelled to add that no solid ground presents itself on the evidence in justification of the affidavit which was made by you for the purpose of postponing the trial of the action in question. With respect to Captain Robertson's case, there is found in your statements at various times, in relation to that case, a want of consistency which indicates some recklessness of assertion. Your assertion, so often repeated, that you had generously taken upon yourself very large liabilities which did not in any way belong to you, as you assert yourself to have been totally unconnected with, and innocent of, the transaction termed 'rigging the market,' is at variance with the statement in your letter to Mr. Lefroy, that the debt was as much Captain Robertson's as your own. The Masters of the Bench are unable to reconcile an act which, according to your version of it, would have been one of romantic generosity and self-devotion (scarcely consistent with your duties to others and with the reasonable claims of justice) with other portions of the evidence, and with the ordinary presumptions which arise from your conduct as disclosed throughout these painful transactions. The fourth charge relates to a matter of a different character. The Masters of the Bench are glad to find that it is not justified by you, but the grounds on which you attempted to palliate your conduct are not satisfactory to them. Your proposal was one most improper from a barrister to an attorney, and invited a breach of duty on the

because a man is in Parliament, and because he has been for a couple of years a fluent speaker on their side of the House, select him from a crowd of able and distinguished men, for one of the best preferments on his Circuit, and the appointment turns out unfortunate, and gives rise to scandal and disgrace, surely the press, and more particularly that portion of the press which devotes itself to the discussion of legal questions, has a right to protest against it boldly, and renders good service to the country by so doing. Gentlemen, if such conduct should become a system, and be permitted to continue without observation, the time would not be distant when men, without distinction here, and without distinction in Parliament, merely because they have seats in Parliament, would be thrown over the heads of the deserving members of the profession, and raised to the Bench on which my lord now sits. Whenever, if ever that time shall come, or serious apprehension of its having come shall be entertained—whenever the time shall come that the Bar of England believes, and has reason to believe, that, merely because a man has a seat in Parliament, and is of unstained character, he will be raised to the Bench ; why, then, I say, the heart of the Bar will be taken out of it, and there will be no adequate incentive for the laborious study and the long devotion to the profession which are necessary to insure success. Gentlemen, it is in vain for Mr. Seymour to think he can bring such an action as this without putting the whole profession upon its trial, and provoking a full vindication of it. The truth must be spoken. Happily, hitherto, no man has been raised to the Bench who has not been a man of merit, and known to be a man of merit. No man has been raised to the Bench who has not on the Bench shown himself capable of discharging its duties ; but if such a system is allowed, without complaint, to take root, as that of appointing to the Recorderships of places like Leeds, Liverpool, Newcastle, and Brighton, men who do not deserve such appointments, and it is passed over without observation, the convenience of parliamentary government will soon extend, for political objects, the concession which is thus made by the public and by the public press ; and the effect of that will be to involve the profession in ruin, and very much to lessen the confidence which the people place in the fair administration of justice.

Gentlemen, let us now see if the main object of this article is not to complain, instancing Mr. Seymour's case as proof, of the mischief to which it leads, of passing over hard-working deserving men, in order to give such preferments as the Recordership of Newcastle to men of inferior position in the profession.

Gentlemen, while putting the Benchers of the Middle Temple upon their trial, through Mr. Butterworth, Mr. Seymour puts the whole profession upon its defence. I repeat, that I believe Mr. Seymour to be perfectly competent to discharge the duties of Recorder of Newcastle, and I will not suggest or insinuate that which I do not know, or which I have no reason to believe. I never knew anything about Mr. Seymour's quarrel with his Circuit until I read this book the other day, it not having been sent to me by Mr. Seymour, and I will not suggest that Mr. Seymour is not as anxious to discharge the duties of his office of Recorder honestly as any man who might have sat at Newcastle in that character. But it is right that the jury and the country should see what sort of men were passed over in order to give this "second-best" Recordership to Mr. Seymour. The late Mr. Addison, Mr. Adolphus, Mr. Aspland, Mr. Serjeant Atkinson, Mr. Tindal Atkinson, Mr. Serjeant Bain, Mr. Blackburn (now Mr. Justice Blackburn), Mr. Bliss, Mr. Cleasby, Mr. Crompton (now Mr. Justice Crompton), Mr. Drinkwater, Mr. Forsyth, Mr. Gathorne Hardy, Mr. Headlam, the two Messrs. Henderson, Mr. Hugh Hill (lately Mr. Justice Hill), Mr. Hindmarch, Mr. Edward James, Mr. Knowles, by whom I may say, that although he would have cared nothing for the emoluments of the office, it might have been felt as an honour and a distinction had such an office, gracefully and without solicitation, been conferred upon him, Mr. Manisty, Mr. Pashley, who is unhappily now dead, a man eminently versed in Sessions Law, and in all the learning which would have enabled him to have discharged the duties of the office properly, and who was afterwards appointed Chairman of the Middlesex Magistrates, Mr. Pickering, Mr. J. Pollock, the late Judge of the County Court at Liverpool, Mr. Watson (the late Mr. Baron Watson), Mr. Webster, Mr. Wilde (now Mr. Baron Wilde), and Mr. Serjeant Wheeler. Those gentlemen were all passed over, and very few of them indeed would have declined to accept the appointment had it been offered to them. It is very easy to resign an appointment when it becomes inconvenient to hold it, and it is always a credit to have such an appointment as that conferred upon you. Now all those gentlemen were on the Circuit before Mr. Seymour joined it, most of them are still in full health and strength, and in the active practice of their profession. Some of them were on the Circuit when Mr. Seymour was born, and they were all set aside to give him this, the second-best Recordership upon the Northern Circuit; and I submit to you, gentlemen, that

the main object of this article is to complain of a system which discourages the Bar of England, which leaves no chance for hard-working, respectable men, but which gives every chance to men who happen to get into Parliament, and are willing to support the Government of the day.

Let us now see what is said upon that question. I say it is a great public question and a proper subject for discussion in this magazine.

"But," says the writer of the article, "there is still another evil influence at work to which we allude with hesitation, seeing the delicacy of a subject which is in some degree foreign to our province, we mean the relations that have grown up between the Bar and the House of Commons. In former times, when the difficulties of finding a seat in Parliament (except for the fortunate nominees to pocket boroughs) were much greater than at present, a barrister as such seldom entered the House, unless he were a candidate for high legal office, or was capable of taking the post of a leading lawyer in the Opposition. In those days the representatives of the Bar were few in the Commons, but they were nearly always able and eminent men, whose legitimate ambition was fixed on the higher prizes of the profession. The House still contains such men, and the Bar has still reason to be proud of such representatives, but they now form only a small proportion of the total number of barristers in Parliament. Since the passing of the Reform Act threw open a number of popular constituencies, the array of 'gentlemen of the long robe' in the House has largely increased, and we believe at the present moment upwards of seventy of the Bar have added the cares of legislation to their labours in practice."

That is a mistake and a very great mistake. I have, for the purposes of this cause, looked over the names of all the Members of Parliament, and I do not find more than twenty who have the least pretension to be called barristers in practice. It does undoubtedly happen that for some of the higher offices, Secretaryships of State and Under-Secretaryships, it has been found necessary to resort to our profession for competent men, and in that way the number of the members of the Bar who are in Parliament amounts to seventy. There are not above twenty, at the very utmost five-and-twenty, in practice, and if you divide that number between the two political parties in the State, you may judge what chances of snug appointments and retainers there are for gentlemen of the long robe who happen, from some lucky accident or local connexion, without much ability either for Parliament or the Bar, to obtain seats in the House of Commons.

"Whether," continues the writer of the article, "these legal gentlemen make the best representatives, is a question on which we do not enter; the fact that they are returned by free and intelligent electors constitutes a presumption that they do so; it is their influence on the *morale* of the Bar with which we have to deal. Now, as it is certain that the great majority of the Sanhedrim we have alluded to can never become Solicitors-General or Puisne Judges, it follows that the current price of a barrister's parliamentary support has fallen terribly of late years. The glut in the market has seriously diminished the value of the article. In bygone days we may presume that a counsel who had obtained a seat in the House yielded his political virtue to nothing less than a descent by the Jupiter of the Treasury in a golden shower of judicial dignity, or a law officer's emoluments; but now-a-days votes are won, and a too demonstrative independence is wooed away, by the humbler agency of silk gowns, second-class Recorderships, and even the obscure counselships to Government offices."

The question here is not whether this be literally true, but whether, if it be in substance true, it is not a disgrace to the Government of the country and a serious injury to the Bar. It is not an attack upon liberal, nor an attack upon conservative Governments; they both do it when they have the opportunity. Is not that a fair subject for public discussion? Is it decent that gentlemen should present themselves here with Government briefs in their hands who are not in the first rank among the junior members of the Bar, or if in this front row, not among those who have been long distinguished, or distinguished in any noticeable degree? I apprehend not. The abuse of the Government patronage is a fair and just subject of complaint; it is a matter which affects the independence of the Bar and the character of its members in the House of Commons, for no man who accepts such offices and briefs can comfortably retain them and stand in opposition to the Government.

"What effect," says the writer, "this new development of patronage may have on a House which professes to be jealous of any official encroachment on its independence we do not care to inquire, though, considering the number of junior barristers in Parliament, and the startling amount of places that may now be brought to bear upon their votes, the subject may not be unworthy of consideration by those interested in the purity of our constitution. But viewing the question as relates to the Bar, we have no hesitation in saying that the practice at present pursued, of using the House of Commons as a stepping-stone to inferior places in the profession, is fraught with evil. Hard-working and worthy practitioners who may not have either the means or the inclination to enter Parliament, see themselves continually passed over by far inferior men, whose claims to promotion have originated in the division lobby.

Speculative, adventurous juniors, who are not rising so fast as they fancy that their merits deserve, or whose characters require some fresh varnish, are tempted to make a bold dash at a constituency, and to prop up their professional fortunes by parliamentary interest. The moral tone of the Bar is lowered by spectacles of successful impudence, no doubt occasionally ending in some terrible and damning crash, but not the less demoralizing in their temporary glitter as they are degrading in their final infamy."

Don't suppose, gentlemen, from the observations I have made, that I hold it to be unworthy or unbecoming for a young member of our profession to take a seat in Parliament. Far from it. If he goes there with the fair and honest purpose of refuting the undeserved but too prevalent opinion of the comparative degeneracy of the English Bar, of becoming, while achieving distinction for himself, useful to his Sovereign and his country in public life, and of acting sincerely, honourably, and independently, I know no career more worthy of respect, or a fitter or nobler object of legitimate ambition. That, however, is a very different thing from what is complained of here.

"We have prefaced the special subject of our article with these observations because we believe that they are needed at the present moment, unpalatable and little flattering as they may be. The Bar will be lost in public estimation if scandals are to increase without any effort being made on the part of the profession to rid themselves of the generating causes; and when we are entering on a history which must be a subject of humiliation to every man of honour among us, it is well to state plainly that some at least of the moral evils afflicting the Bar are capable of removal by the exercise of professional opinion on the distribution of place and precedence."

The exercise of professional opinion on the distribution of place and precedence at the Bar! It would have about as much effect as the chirping of the cricket on the hearth or the sparrow on the house-top. None at all; it would be utterly and entirely disregarded; there is no protection for us against an evil which we all feel, but against which we have never until now had an opportunity of protesting—none whatever but in the bold outspoken freedom of the public press; the Judges cannot help us—they would if they could, but they have not the power to do so; except, perhaps, in the rare instance of a union in the same person of high parliamentary and judicial authority—they would not be listened to if they attempted it. The evil must go on; there is no chance of its correction, unless it be by the earnest, vigorous protest of public writers, selecting such occasions for making the protest as have

been offered, most unfortunately, by the scandals to which the conduct of Mr. Seymour has given rise.

Let us, gentlemen, now see in what way these observations are applied to the case of Mr. Seymour.

"We never were able to discover that Mr. Digby Seymour, during his first sojourn in the House of Commons, added in any appreciable degree either to the usefulness or the brilliancy of that assembly ; we are not aware that any measure was secured by his exertions, or any principle elucidated by his oratory, or any party at all benefited by his adherence, save in the matter of his vote. For this last he was rewarded with the Recordership of Newcastle, to the just dissatisfaction of the Bar, who thought that better men had been passed over for an unworthy political motive."

Gentlemen, it is difficult, I know, to judge impartially of what is written about ourselves ; but if Mr. Seymour will candidly consider the circumstances under which he admits that he obtained the Recordership of Newcastle, he cannot but feel that, instead of being disposed of as it was, it ought to have been given to some person in the position which Mr. Atherton filled when it was offered to him, he being then of fifteen years' standing at the Bar, and in a most respectable position on the Northern Circuit.

"The worst evil attending a weak Government is the necessity under which it labours to catch every possible vote in any quarter, and its besetting sin is an improper distribution of patronage. Lord Palmerston's present administration has, probably, never numbered a working majority of twenty trustworthy votes in the House of Commons, and the political circumstances of the time have tended to diminish the ranks of ministerial supporters. It probably became necessary to secure every doubtful adherent, and this consideration may palliate, but cannot excuse, the promotion of Mr. Digby Seymour to the rank of Queen's Counsel. Even at the time of the appointment" (and for this we have Mr. Seymour's own authority in his speech at Southampton) "rumours were afloat in the profession that his conduct must form the subject of investigation by the Benchers of the Middle Temple ; and we have heard that Lord Campbell, shortly before his death, expressed his deep regret that he had been ever led by political pressure to promise a silk gown to the member for Southampton. If this be so, it furnishes a curious commentary on one portion of Mr. Seymour's speech at Southampton, in which he quotes the patronage of Lord Campbell as a proof of the purity of his professional career."

My friend, Mr. Lush, complains that in that passage the writer of this article says, that Lord Campbell lived to regret, and express his regret, that he had been led by political pressure to promise a

silk gown to the member for Southampton. I do not know, gentlemen, whether Lord Campbell did regret it or not, but I know that he ought to have regretted it. It was in the last year of a long life, protracted beyond the ordinary number of years allotted to man. Lord Campbell was a great lawyer, and filled with high distinction the office which my lord now holds; but if Lord Campbell knew that these rumours were current against Mr. Seymour at the time he presented him to the Queen in the robe of a Queen's Counsel, to kiss her Majesty's hand, he did himself no credit, and he did the profession to which he belonged irreparable mischief. It now stands clear upon the evidence of Mr. Seymour, that before Lord Campbell gave Mr. Seymour the rank of Queen's Counsel, he had been refused the rank of Serjeant-at-Law. The rank of Serjeant-at-Law is given by the Lord Chancellor, as well as the rank of Queen's Counsel, but it is not given generally—indeed, I believe it is never given, without consulting the Lord Chief Justice of the Court of Common Pleas.

LORD CHIEF JUSTICE COCKBURN :—It is generally so, but there are exceptions.

MR. SERJEANT SHEE :—My lord knows exactly how that is, having filled the office of Chief Justice of the Court of Common Pleas. It is the Lord Chancellor's appointment, but I believe, that out of respect to the Lord Chief Justice, in whose court, twenty years ago, the Serjeants had exclusive audience, it is not generally given without his assent and approval. If Lord Campbell knew that there were objections to Mr. Seymour, of the nature which afterwards became public, I repeat, that if he did not before his death regret having made the appointment, he ought to have regretted it, and that he did, by making the appointment, a very serious injury to the profession.

Gentlemen, do I mean by this to represent that Mr. Seymour was not in point of practice, or in point of ability, a fit man to be appointed Queen's Counsel? Of late years the rank of Queen's Counsel has been given much more lavishly than it was when my lord and I were called to the bar. There were then only two or three Queen's Counsel in much practice—not more than five or six, usually occupying this front row; but of late years, the rank of Queen's Counsel has been given to almost any man who is of fair standing at the Bar, and whose character is unstained. If there be a stain upon it, it is never given; it had never been given in my memory, to any man with a stain upon his character, until it was given to Mr. Seymour. If I may be permitted to speak of the dis-

posal of the honours of the profession by the Lord Chancellor, the right course to have taken in the matter would have been, as was done on Mr. Seymour's application for the coif, to have postponed a decision upon it; to have given Mr. Seymour a reasonable time to bring his case before the proper tribunal; to have told him that there was no objection to making him a Queen's Counsel, except the unhappy rumours which had arisen out of his taking the benefit of the Gentleman's Act, and that as soon as all that prejudice was cleared away to the satisfaction of the Benchers of his Inn, he would receive the rank to which his professional position entitled him; and mind, his professional position did entitle him to it, regard being had to the way in which that honour has been, for the last twenty years, distributed among the members of the profession. This, gentlemen, is what I have to say upon the second question:—Is the minor patronage of the Crown as dispensed by the Home Secretary, and the higher patronage of the Crown as dispensed by the Lord Chancellor to the members of the Bar, honestly and properly bestowed, or given for considerations and for objects which ought not to influence those who have the disposal of them?

I now come, gentlemen, to the third and last point which it is my purpose to submit to you; one which, though differing considerably in its character and complexion from the other two, is nevertheless of the utmost interest to the Bar, and because of interest to the Bar, of interest to the public. The passage of the article to which I am about to address myself, relates to the conduct towards Mr. Seymour of a very important subdivision of the Bar of England—the Northern Circuit; and the question as I have written it (being most anxious to submit to you well-considered, definite propositions, which you may clearly understand, and which I may discuss without being too discursive,) is this:—Is it true that so large and considerable a portion of the privileged body admitted by the Inns of Court to the degree of Barrister, as the Northern Circuit, can have so disgraced itself with regard to a young man, without a dishonouring blot upon his character, as to make him the mark of a cruel and jealous opposition, and a determination to keep him down, merely because he was of Irish birth? Now, it may be that, properly and strictly speaking, this is not in its nature a public question, but it borders very closely upon the limit of public questions; it is a matter of great moment to the Bar, and it does indirectly connect itself with the other questions which I have discussed, because, if injustice has been done to Mr. Seymour, it has been done by 207 gentlemen of whom many are of high eminence at the bar, every one of whom is without any

right to practise on the Northern Circuit or elsewhere, except the right which he derives from the degree of barrister conferred upon him by his Inn of Court. If not in its intrinsic nature a public question, Mr. Seymour has made it a public question. Mr. Seymour has thrown it down for discussion before the electors and non-electors of Southampton; Mr. Seymour has made it the main point of his appeal to the populace of the borough which he represents from the censure pronounced upon him by the Benchers of his Inn; he protests in that appeal, that all his misfortunes have arisen from the mean, dastardly, unscrupulous conduct of a number of gentlemen of the highest position at the bar, the members of the Northern Circuit. How can Mr. Seymour complain, after having invited, provoked, necessitated the public discussion of such a question, that the gage thrown down by him was taken up, and his challenge met in the public press by as strong a corrective as it deserved? But let us see a little more in detail what it is Mr. Seymour complains of; it is the only matter in the whole of the libel to which he has appended an *innuendo* to the effect, "this means me." I do not want to protect myself, or rather my client, by merely verbal criticism upon an article of this description. In terms, the article does not say of Mr. Seymour that of which Mr. Seymour complains as being offensive to him. But though not in strict construction said of him, you may have to judge whether it was meant to apply to him; and if it was, whether he did not deserve it; and if he did not deserve it, whether he did not so nearly deserve it as to deprive him of all right to damages from the defendant. Mr. Seymour has the unhappy habit, when displeased with only a few members of his profession, of putting the whole Bar of England on its trial. I venture distinctly to say (and you know I would not say it, and could not say it, in the presence of this audience, if it were not true) that there never was a more slanderous or disgraceful charge than the charge made by Mr. Seymour against the gentlemen who are the members of the Northern Circuit. If it had been said of my own Circuit, the Home Circuit, I should have felt it as a wound,—and though not uttered of my own Circuit, but of the Northern Circuit, I still resent it as a dishonour and an insult to the whole profession. So far from having joined the Northern Circuit under a disadvantage, Mr. Seymour went to it with great advantages in his favour. Such Irishmen as Baron Martin, Mr. Justice Hill, Mr. Serjeant Murphy, Mr. Seymour Fitzgerald, then held distinguished place on it. It is all moonshine to pretend that the son of a clergyman of the Irish Branch of the Established Church, and a graduate of

Trinity College, Dublin, is received in England in any spirit but the spirit in which an Englishman is received. Received! why, gentlemen, he is made welcome—no man better liked than a worthy member of the nation and the class to which Mr. Seymour by his birth belongs. Mr. Butterworth asks you to judge if any man ought to have said what Mr. Seymour said under the circumstances in which he said it—that is, not to use his own unhappy phrase, “after dinner,” not heated by wine, but in a deliberate vindication of himself before the electors and non-electors of Southampton, or rather before the whole world, wherever the *Times* newspaper is read. It is for you to determine whether what Mr. Seymour admits that he said, does not justify a degree of indignation in the minds of all who saw it the next morning in the columns of that journal, such as to account for, if not to justify, the intemperate language which is used in this article respecting him:—

“Gentlemen,” said Mr. Seymour, “I have now been nearly sixteen years at the Bar. I never won a laurel and never obtained a promotion without a severe and arduous struggle. I came among the members of the Northern Circuit with that misfortune which my countryman Grattan has described, I came ‘with the curse of Swift upon me,’ I was an Irishman. I was made from my earliest time the mark of a cruel and jealous opposition, and a determined effort to keep me down if it were possible. But, gentlemen, their efforts failed.”

Such is the charge which Mr. Seymour made against the Northern Circuit, a Circuit at least equal in number, in the honour, learning, and high character of its members, to any Circuit of the United Kingdom. I say that that charge is one which imputes the most scandalous dishonour to a body of honourable and respectable gentlemen, and it is utterly and entirely groundless. If it were possible that so illiberal a feeling as Mr. Seymour imputes to the Northern Circuit could influence any considerable portion of our profession, it could hardly fail to have become known to the humble individual who now addresses you. As a member of an Irish family, bearing an Irish name, paternally of Irish descent, generally supposed to be of Irish birth, and having taken during the five years I sat in Parliament for an Irish county more interest in the affairs of Ireland than probably any man in the House of Commons not connected with the Government,—if the mere fact of being an Irishman could make a man “the mark of a jealous and cruel opposition,” I most certainly should have found it out. I assure you, gentlemen, that I have found nothing of the kind. I see my brother O’Brien on my right hand, an Irishman of the Midland Circuit,

than whom no man is more liked, or more respected. On my left I see another friend, Mr. O'Malley, of the Norfolk Circuit, than whom no one fills a better position at the English bar. We have, on the Home Circuit, Irishmen to whom I will refer but sparingly, lest I should wound their modesty. One of them lately appointed, as he deserved to be, by my lord, to the office of Master of this Court, was, while he remained with us, the delight of our social meetings; another, whom I know to be now in Ireland, I will take leave to name, because he is the most Irish of Irishmen, of an ancient and honourable Irish family, rendered illustrious in our own day by the great political distinction of his uncle—Morgan John O'Connell. No man stands better on our Circuit, there is perhaps no one so general a favourite as he is. I say that the statement made in haste, possibly, and excitement, by Mr. Seymour at Southampton, was untrue, and was one that he must have known, had he given himself time to think, to be, without the qualification he gave it yesterday, untrue. Whether true with that qualification I know not; but as he proposed it for public criticism, it was altogether and inexcusably untrue. Nay, it was worse than untrue; the fact is,—and it is creditable to the gentlemen of Irish birth and Irish descent at the English bar, and creditable also to the good feeling of the people of this country,—that, whereas Irishmen cannot have, when called to the bar of England, the advantages in respect of connexion, the connexion of fathers and brothers, and brothers-in-law and uncles, and step-fathers and cousins, among solicitors and persons of local influence, to push them into business, which Englishmen have, they get on notwithstanding, aye, and get well on, occupying some of the best places at the Bar, and being received and treated not only by members of the Bar, but by the Judges on the Bench, with as much kindness, courtesy and friendship as the purest-born Englishman that ever put a wig upon his head. Wherefore, I say, it is a scandalous and disgraceful imputation upon a body of gentlemen with whom Mr. Seymour had a right to struggle in fair and honourable competition, but against whom he had no right to make so damaging, so discrediting, so dishonouring a charge, as that they had, from the earliest period of his connexion with them, pursued and persecuted him because he was an Irishman. He knew it was not true: he as much as owned it to me yesterday, regretting fairly enough the generality of his language, and confining the charge, upon his oath, to a very few members of his Circuit, and to the latter part only of his career. Unhappily, however, before the article he complains of was written, he had published, without the qualification he now desires to give it, to the whole world, to be circulated wherever the English

language is understood, and our national and commercial affairs are subjects of interest, this libel against the members of the Northern Circuit, to be read by the family connexions and acquaintances of that numerous and respectable body, all of whom were to be disgraced and shamed by it, because it pleased Mr. Seymour to appeal from the Benchers of his Inn, not to the fifteen Judges before whom he would have said exactly what he meant and no more, but to the electors and non-electors of Southampton.

Now then, gentlemen, let us come to the passage of which Mr. Seymour mainly and principally complains. In my humble judgment, if the language used in that passage had been more guarded it would have been more effective. I cannot pretend to say that I like that language; and I will further say that in Ireland, at least, it is very rare if it be possible, (and I know something about it, having gone through three contested elections for the County of Kilkenny,) to meet the sort of animal that is described in the latter part of the passage which I will now read:—

“But it is only just to Mr. Digby Seymour to admit that there are two kinds of Irishmen, and that the cordiality extended to the one is by no means secure to the other. There is the Irish gentleman, generous, accomplished, and urbane, perhaps the highest type of the genus gentleman to be found in the United Kingdom.”

Well, that is very high praise indeed; and those who know what Irish gentlemen are in their own Irish homes, would probably be inclined to agree with the writer that they deserve that character, though I cannot say, and do not think, they deserve it better than the real gentlemen of Scotland or of England.

“There is also the Irish blackguard, swaggering, foul-mouthed, and shameless, the most insolent of upstarts, the most unblushing of swindlers, never destitute of a quarrel, never at a loss for a lie. For as the Irish gentleman is of rare quality, so the Irish blackguard is consummate in his growth. Ireland is always great in extremes, more especially in her psychological productions. She has reared generals who have led their armies to certain victory, and she has reared also the tribe of cabbage-garden heroes. She has adorned our Parliament with splendid orators and consummate statesmen,”—my friend rather criticises Irish eloquence; our time would, I must say, be better spent in an endeavour to imitate it—“and has afflicted it also with a breed of bawling demagogues and venal fools. And so it happens that this green and prolific island, with the singular versatility of her race, has supplied to the bar of England some of its brightest ornaments, and some of its blackest sheep; bestowing on the former

for the defendant; or, at all events, such a verdict as will prove to Mr. Seymour that if he hopes to vindicate his character, he must set about it in the right way.

SUMMING UP OF LORD CHIEF JUSTICE COCKBURN.

Gentlemen of the Jury,—In entering upon the judicial consideration of this case, on your part and on mine, some difficulty arises from the way in which it is presented to us to deal with; inasmuch as the whole of this article, from the beginning to the end, is set forth in the Declaration as libellous matter complained of by the plaintiff; and, inasmuch as the article embraces various parts of Mr. Seymour's conduct, both public and private, and is at the same time accompanied with various reflections, political, professional, and personal, it is rather difficult, at the first onset, so to analyse the case in one's own mind as to deal, as one must do, separately and distinctly with each of these heads. I will do my best to assist you by dividing the whole of the article into the various heads of complaint which appear to have been referred to in the course of the discussion. The article professes to deal with the political, professional, and personal conduct of Mr. Digby Seymour. In dealing with each of these various heads, many observations are made of a general character; and it is difficult to say, as one goes through them, to what extent these observations are intended to apply immediately to the gentleman who brings this action. We must do our best, however, to distinguish carefully the various heads of charge, and to see how far they contain libellous matter, and how far they really reflect on the character and conduct of the plaintiff in the cause.

Now, gentlemen, I think the whole may be reduced sufficiently for the present purpose to three main heads: the conduct of Mr. Digby Seymour in obtaining the Recordership of Newcastle-upon-Tyne; the conduct of Mr. Digby Seymour in obtaining his promotion to the rank of Queen's Counsel; and, lastly, his private conduct in respect to certain pecuniary transactions which formed the subject-matter of the inquiry which took place before the Benchers of the Middle Temple. It is not disputed by the learned counsel for the plaintiff that, as regards a man's public political conduct, that is matter for the freest and fullest discussion on the part of a writer in a public journal; but with regard to those things which relate to the private conduct of Mr. Seymour, Mr. Lush (his Counsel) takes a distinction. He says, you have a right to discuss, with the fullest

freedom and latitude, the public conduct of a public man ; but you have no right to pry into the transactions of his private life and conduct, and make them the subject-matter of public obloquy and public criticism. With regard to that last proposition, I shall think it necessary to address a few observations to you when I come to that part of the inquiry which relates to these charges of pecuniary delinquency. With regard to the first portion of the case, we are not embarrassed by any such distinction. It is admitted that the public conduct of a public man, political or professional, is a fair subject for discussion, a fair subject for hostile criticism, and a fair subject for hostile animadversion, provided that the language of the writer is kept within the limits of an honest intention to discharge a public duty, and that his observations are not made the vehicle or the instrument of slander and of malice, using criticism not as a means of fair discussion, but of slanderous and malicious accusation.

Now, what is it that this article alleges with regard to Mr. Digby Seymour as connected with his acceptance of or obtaining the Recordership of Newcastle-upon-Tyne? The article begins with general observations, as to which it is impossible, I think, to say that they do not come fairly within the scope and province of a public writer. Whether it is desirable that members of the Bar, being in the House of Commons, shall receive appointments to subordinate offices held by members of that profession while they are in Parliament, as the reward of their parliamentary adhesion to one or the other of the great political sections of the State, is a matter which nobody, for a single instant, would deny to be a perfectly fair subject for public discussion. On the one hand, it is said if a man is otherwise entitled, by his professional standing, by his attainments and his character, to an appointment to a professional office which happens to fall vacant, why should he be excluded because he is a member of the House of Commons? Nay, the argument goes further ;—it is said, why should not the influence which he fairly acquires with the Government of which he is an adherent and a supporter, be fairly used by him in order to obtain the promotion to which, perhaps, he would not attain were it not for that circumstance, but for which, nevertheless, if he is fortunate enough to obtain the object of his desire, he is perfectly qualified. Well ; that is a very fair argument on the one side of the question. On the other side it may be said, that although there is no objection to a man who is a member of Parliament taking office if he takes it with all the responsibilities of office and in the face of the public ; that although there is no objection to promotion when that promotion takes a man out of his

sphere in the House of Commons, by promoting him to a judicial office inconsistent with his being a representative of the people ; there is an objection, and a well-founded objection, to men who ought to be, according to the theory of the constitution (whatever may be its practice), free and independent members of the Legislature as representatives of the people, accepting office while in Parliament and putting themselves under a sense of favour and obligation which binds them, as it were, to a particular course of conduct. All these are perfectly fair matters for discussion ; and I entirely agree, and I think you also will agree, with the learned counsel who addressed you on the part of the defendant, that it is not only within the province of a public writer to discuss such subjects, but that he is fully and fairly entitled, if his opinion be that such a course of proceeding is detrimental to the independence of the Bar, to the independence of Parliament, to the due representation of the people and to the Government as the Government ought to be carried on, to animadvert with severity on the conduct of those who give, on the one hand, and those who receive, upon the other.

Now, if the article in question confines itself within those limits ; if it discusses the propriety of giving or receiving patronage under such circumstances ; if having established, as the writer thinks, the impropriety of such a system, it proceeds to animadvert upon those who have lent themselves to it on the one side or on the other, I apprehend no one would doubt that that is within the legitimate province of a public writer. But if the writer goes beyond that, and asserts that a Member of Parliament, being a member of the Bar, has bargained to sell his vote upon a corrupt contract, and asserts that whereas the member would not, under other circumstances, have voted in a particular way, that he has either spoken or voted, or both, in support of a particular measure or against that particular measure, under a corrupt understanding that his adhesion was to be purchased by a corrupt vote,—that I apprehend no one would hesitate to say is a most serious charge ; a charge that no man, whether writing in private or in public, ought to dare to make against another, unless he is prepared to prove and to substantiate an imputation of so gross and serious a character. I know there are some persons who entertain very shadowy notions about public morality, and the honour and integrity of public and political character. I trust that such opinions will never find their way into the jury-box, when a man who has had a charge of that kind made against him comes forward to vindicate his character in a Court of Justice. I trust, for the honour of the country to which

we belong, that there is such a thing as political honour and political integrity ; and I trust that a matter of such serious importance to the well-being of us all, will never be treated lightly or contemptuously in a Court of Justice ; and that if a charge is made against a man of having sold himself and his vote on a corrupt bargain for promotion to an office, or to any other object of ambition or desire, unless the charge can be substantiated it will not be treated lightly by a jury. But then, gentlemen, it is for you to say whether, upon reading this article, it amounts to more than this ; that here is a vicious and bad system existing in the government of the country, carried on by whichever section of the great factions or parties of the State it may be, which is unhappily prevalent, of rewarding political adherents by the distribution of patronage and by appointments to offices, which appointments would not otherwise be given to the parties on whom they are conferred. If all that the article means is, that that system, being unhappily prevalent, has led, in the present instance, to the appointment to an office and to the promotion to high professional rank of a gentleman who had no just claim to either, and if that question is fairly discussed, it is not because Mr. Digby Seymour, or anybody else against whom such animadversions may be directed, may smart under them, that, therefore, the jury are to say that the article is libellous. All men who occupy public positions must submit, now and then, to be a little roughly handled, and to be uncourteously, and often unjustly, treated ; and people must not be too thin-skinned with reference to such matters. It has happened to everybody who has had anything to do with public life, to have, at one time or other, observations made upon his conduct and motives which, in all probability, at the bottom of his heart he has felt to be unfounded and unjust ; but we submit to it, and why ? because we know that, upon the whole, that bringing, by means of the public press, the conduct and motives of public men to the bar of public opinion, is the best security for the discharge of public duty.

And now let me call your attention, gentlemen, to what this article is ; and then it will be for you to say whether you think that it is only with a view of denouncing a vicious practice which has obtained in the case of Mr. Digby Seymour, that these observations are made ; or is it intended to impute to Mr. Digby Seymour that he has bartered his vote and his parliamentary independence for the sake of obtaining the office of Recorder of Newcastle, in the one instance, and promotion to the rank of Queen's Counsel, in the other ? They say in the article,—

“ We never were able to discover that Mr. Digby Seymour, during

his first sojourn in the House of Commons, added in any appreciable degree either to the usefulness or the brilliance of that assembly ; we are not aware that any measure was secured by his exertions, or any principle elucidated by his oratory, or any party at all benefited by his adherence, save in the matter of his vote."

That is a sort of observation that no man can complain of ; anybody may entertain that opinion. In another place they deny his scholarship and his genius. All those are things for which a man must not bring an action for libel. A political adversary, when he is writing adversely, always doubts the motives or denies the ability and genius of the man against whom he is writing. We do not attach any importance to those things. If, for instance, a man sitting down and discussing the merits of various members of the profession, were to say of my brother Shee that he is not a man of genius or of eloquence, we should only laugh at him for saying so, because the contrary is notorious to everybody who knows or has ever had the advantage of hearing him. Nobody would think of bringing an action for such a thing as that. A man's scholarship, his title to be considered a genius, an eloquent man, or a valuable member of society, are all matters which are open to observation ; and no man can complain if people do not take so favourable a view of his merits and claims to distinction as he does himself, or as his friends may do for him. But then, after all that, there comes the important matter. They say,—

"For this last" (that is, the matter of his vote) "he was rewarded with the Recordship of Newcastle, to the just dissatisfaction of the Bar, who thought that better men had been passed over for an unworthy political motive."

I do not know that that, again, as regards the Bar, and the opinion that better men had been passed over from political motives, is not a perfectly legitimate observation. Mr. Seymour was a man of eight years' standing ; fit for the office probably ; but I do not think that Mr. Seymour himself, or his learned advocate on his behalf, would think of saying that the Northern Circuit, comprehending, as it does, so large a portion of the ability and attainments of the Bar, and where there must have been men of so much longer and higher standing than himself, did not contain a number of men to whom that office would have been given in preference to Mr. Seymour, supposing that professional claims to advancement had alone been taken into account. That does not conclude the question, whether a man in Parliament, who is a supporter of the Government, may not be entitled to the preference—that is a matter of opinion ; but it cannot be any hardship upon Mr. Seymour to say that in the profession, the

great majority of whom are not in Parliament, there would naturally be some dissatisfaction at finding a man so much their junior in years and in standing promoted to an office which would be, in all probability, an object of ambition and desire to a number of gentlemen on his own Circuit of higher standing and (to say the least) of not inferior ability to himself. They say,—

“For this last he was rewarded with the Recordership of Newcastle.”

Then to that there is appended this note,—

“We observe that in his speech at Southampton, Mr. Digby Seymour instances his elevation to the Recordership of Newcastle as a proof of his *professional* success. We believe that Sir George Hayter could, if he were so minded, tell a different tale.”

Now, gentlemen, I think it is but fair to call your attention to that paragraph, and ask you to consider (for it is with you) what is meant by it? If you see your way to the conclusion that it is meant to intimate that there was some corrupt contract between the Government and Mr. Digby Seymour, that if Mr. Digby Seymour would give his vote in favour of the Government on any particular question, or generally, he should be rewarded by obtaining this office, then there is no doubt that that is a very serious imputation upon him.

Then, gentlemen, besides that, there is another passage to which I must also call your attention, with reference to this important question of the Recordership; but let me first take you to that part of the article which relates to Mr. Seymour's promotion to the rank of Queen's Counsel. They say:—

“The worst evil attending a weak government is the necessity under which it labours to catch every possible vote in any quarter, and its besetting sin is an improper distribution of patronage; Lord Palmerston's present administration has probably never numbered a working majority of twenty trustworthy votes in the House of Commons, and the political circumstances of the time have tended to diminish the ranks of ministerial supporters.”

Those are general observations about which nobody, I suppose, could raise a serious question as to their not being such as might be very properly made by a man who was discussing the subject of public patronage.

“It probably became necessary to secure every doubtful adherent, and this consideration may palliate, but cannot excuse the promotion of Mr. Digby Seymour to the rank of Queen's Counsel. Even at the time of the appointment, rumours were afloat in the pro-

fession that his conduct must form the subject of investigation by the Benchers of the Middle Temple, and we have heard that Lord Campbell, shortly before his death, expressed his deep regret that he had been ever led by political pressure to promise a silk gown to the member for Southampton."

Now there, again, I ask you what does that mean? Does it mean that Mr. Digby Seymour obtained his rank as Queen's Counsel by virtue of any corrupt understanding with the Government; or does it merely mean this?—that it is rather an attack upon the Government than upon Mr. Digby Seymour. You see Mr. Digby Seymour, in his speech to the electors of Southampton, cited and referred to his appointment by Lord Campbell as Queen's Counsel as one of the circumstances in his favour; and it has been used in the course of the discussion here as a certificate of character against the charges which had been brought against him before the Benchers of the Middle Temple, and against the censure which the Benchers thought fit to pass upon him. Upon that, the writer of this article makes these observations. He says:—

"If this be so, it furnishes a curious commentary on one portion of Mr. Seymour's speech at Southampton, in which he quotes the patronage of Lord Campbell as a proof of the purity of his professional career."

Now, if what that meant was, "Instead of your citing that as a proof that Lord Campbell considered you a man of unexceptionable character and one upon whom the rank of Queen's Counsel might well be conferred (and you put it forward in that shape to the electors of Southampton) we say the fact is this; that such is the position of Government, from its weakness in the House of Commons, that it is under the necessity of securing every political adherent that it can; and hence it is under the necessity of distributing professional patronage in a manner in which probably it would not otherwise be distributed." If that be all that is meant, you would probably say there is nothing libellous in a public writer, when he is discussing the propriety of such a system of distributing patronage, indulging in such observations. But is that all that is meant to be conveyed, or is it intended to imply that Mr. Seymour has corruptly bargained and sold his parliamentary votes and his independence, to the Government, in order to obtain professional promotion? Then the article goes on to say:—

"It is an extraordinary, and we believe, an unprecedented fact, that a Barrister should be arraigned before the Benchers of his Inn for

improper conduct at the very time when the Crown has been induced to raise him to the superior rank of the profession. Yet this, we understand from his own lips, was the case with Mr. Digby Seymour; and the language employed by the Benchers in their judgment forbids us to hope that the inquiry before them was either unjust or uncalled for."

Now, if what was meant by that was simply this: "You have been promoted, not because the Lord Chancellor thought that your professional attainments were such as entitled you to it, but because your promotion was part of the system by which the Government secures adherents; and, in addition to that observation, we must say this, that you were promoted by the Lord Chancellor at a time when there were charges, and grave charges, brought forward against you, and therefore the promotion was one which the Lord Chancellor was not justified in making," it becomes a question, as I have said before, whether that is not fairly within the scope of public discussion with reference to a matter of so much general interest and importance; and if the case had stopped there, I do not, myself, think, I must own, that up to that moment in the discussion of this question of the promotion of Mr. Seymour as Queen's Counsel, anything is said which might not have been said on the promotion of any other gentleman who happened to be a Member of Parliament, and who happened to be promoted to the rank of Queen's Counsel, he being at that time a member of the House of Commons, and an adherent of the Government, subject to this, that there is an allusion to the proceedings which were then pending against Mr. Seymour; but upon that, again, I must observe, that if a gentleman happened to have the misfortune to have grave charges, affecting his character as a gentleman and man of honour, pending before the Benchers of the Inn to which he belonged, (the proper tribunal on a question of professional discipline,) and if that were known to the Lord Chancellor, it would not be consistent with the duty of so eminent an individual as the Lord Chancellor to promote a gentleman while those charges were pending against him. But, gentlemen, these observations do not stop there. After setting forth Mr. Digby Seymour's speech to the electors at Southampton (which on every ground I cannot help thinking was a most unfortunate one, and upon which I shall have something to say presently) they say this:—

"If this speech took the public by surprise, it was read by the Bar and the Benchers, though on different grounds, with considerable astonishment. The Bar were amused to find that the promotion of Mr. Digby Seymour, first to the Recordership of Newcastle and then to the rank of Queen's Counsel, could be quoted as

any approval of his professional character, when the favour shown him was notorious by the result of negotiations in the division lobby."

Now, what was that intended to convey? Was it intended simply to say that Mr. Digby Seymour had given his adhesion to the Government in the hope of obtaining professional advancement and promotion, and that he succeeded in that object; or that the Government, in the hope of securing a gentleman of Mr. Seymour's attainments and position as the representative of a large commercial borough like the town of Sunderland, had given him office in the one instance and promotion in the other, which they would not have given if he had not been a Member of Parliament; or does it mean to say this: "You (Mr. Seymour) were at the best a doubtful adherent of the Government; you were very likely to go against them, and would probably have gone against them on some occasion when your support was of importance; negotiations took place in the lobby of the House of Commons, and by means of those negotiations, and by reason of your agreeing to support the Government, you got a promise, which was afterwards realized, of the Recorder-ship of Newcastle in the one case, and of the rank of Queen's Counsel in the other." If that is what is meant, I own I cannot help thinking (and you will probably think) it is a very serious charge to make against any one. Although a man may fairly say, "While I support the Government, if I, *cæteris paribus*, am as good as another man that gives me a title to a preference;" and there are many honourable men who think that not inconsistent with political integrity and honour, there are others who think it is fatal to the independence of Members of Parliament and to the best interests of the public. That is a matter on which there are grave differences of opinion; but to say that a man entertains an opinion on a particular subject which would induce him to speak or vote against the Government of the day, and that then those who deal with and manage the delicate subject of winning members to vote one way rather than the other, enter into negotiations with him in the lobby and, he being a man of plastic political morality, secure his adhesion by promising this or that, or by holding out little inducements of this or that kind, and get him to vote in a way in which he would not vote otherwise, that appears to me (though it is a subject for you to exercise your judgment upon and not for me, except so far as I can help you by pointing out what are the considerations which arise) to be a matter involving a grave charge of political dishonour and dishonesty. If the meaning of the observation is, that Mr. Seymour

corruptly sold himself to the Government, you ought, certainly, to treat it as libellous matter, and as a thing beyond the province of a journalist or a public writer to assert, unless he is prepared to prove it. Mr. Digby Seymour has been examined with reference to these matters, he was cross-examined especially respecting his appointment to the Recordership; the office was offered, in the first place, to Mr. Atherton, a gentleman of very high distinction on the Cirenit; in fact, one of the leaders of it, and now her Majesty's Attorney-General. Mr. Atherton did not think it worth his while, in his position, to accept it; he did not think it worth the trouble of a contested election which it would have involved, and therefore he declined it. Then, it is certainly rather a significant fact that one of the gentlemen discharging the duties of a whipper-in, should have been speaking in the lobby to Mr. Seymour on the subject of the Recordership, and saying, that if Mr. Atherton refused it, he (Mr. Seymour) probably would have it. On the other hand, if the language used in this article bears the character and complexion to which I have referred; if it means to assert that there was a corrupt bargain on the part of Mr. Seymour, there is, in the first place, no attempt to put a justification on the record, as has been pointed out to you by the learned counsel for the plaintiff; and, in the second place, it is for you to say whether or not an observation of that kind made by a gentleman in the position of Mr. Berkeley was anything more than an observation made by a member of the Government, who having probably been informed that Mr. Seymour was an applicant for the Recordership of Newcastle, said in a friendly way, and as a pleasing piece of information, that a gentleman to whom the appointment had been offered had refused it, and that therefore there was reasonable ground for expecting that Mr. Seymour might obtain it.

With these observations I will leave that part of the libel, as to which it is admitted that a public writer may fairly enter upon the discussion of subjects of this kind, as being of a public nature affecting the character of a public man. Are you of opinion that the writer has kept within the true bounds and limits of his right and duty as a public writer, or is an assertion here made, reflecting on the character and honour of Mr. Seymour, which is without foundation? If so, Mr. Seymour would be entitled to your verdict for whatever you may think reasonable in respect of that charge.

But I entirely agree with my learned brother, that that is not the important and prominent part of this question; and I cannot help thinking, that however much may have been made of it, if that had been all, we should not have heard of this action, and that the really

stinging part of this article is that portion of it which relates to the charges which were made the subject of inquiry, and afterwards the subject of animadversion before and by the Benchers of the Middle Temple.

Now, it becomes very important to see how the case is put in the article; whether new facts are stated, or whether the writer proceeds upon the facts as stated by the Benchers in their judgment. Before entering, however, upon that part of the inquiry, I must here observe upon what fell from Mr. Lush as to the legal position of the parties with reference to this part of the case; namely, that although the conduct of a public man is open to public discussion, his private conduct is not; and that it does not lie in the mouth of a man who has attacked another with reference to his private conduct to say, "I did it only in the fair discharge of a public duty." But there is this distinction in this case, that however true that proposition may be with reference to the private conduct of a private individual, Mr. Digby Seymour does not occupy the position of a private individual, nor is it as a private individual that these charges were made the subject of inquiry before the Benchers of his Inn. Mr. Digby Seymour is a barrister, and as such is subject to the jurisdiction of the domestic forum of the Benchers of his Inn; and I take it to be beyond dispute, that if the conduct of a member of an Inn of Court is such as to be unworthy of a gentleman and a member of the profession, he is within the jurisdiction of that forum. We hear of charges in the army of conduct unbecoming an officer and a gentleman, and although there may be no breach of military discipline, yet the breach of individual honour is held to be a sufficient ground for inquiry, and for such animadversion as the case may call for. In like manner, if the conduct of a member of the Bar is such as to be unworthy of a barrister, and unworthy of a gentleman, that again is always considered to be a proper matter to be inquired into by the Benchers of an Inn of Court. Upon that ground it was, and upon no other, that these matters were made the subject of inquiry. Now, why is it that the Benchers of an Inn of Court have this jurisdiction? Partly for the protection of the profession, and partly for the protection of the public; that the profession may not be disgraced by having enrolled among its members persons who are a dishonour and a discredit to it, and partly that the public, who consider (as you have been truly told) the rank of a barrister a sufficient test of the trustworthiness and honour of an individual, may not be misled and deluded by such a belief, if his conduct be really such as to disentitle him to their confidence; and therefore I

of Mr. Digby Seymour, whether as a member of the Bar, as a man in public political life, or as a man occupying a judicial position, might fairly be made the subject of discussion. But then the question is, whether the comments which have been made have been kept within those bounds by which they must reasonably be confined. What is it that this article alleges? It states, so far as I understand it, no facts as regards the proceedings before the Benchers, but it sets those proceedings out, and makes certain comments upon them. It begins, by way of introduction to the proceedings before the Benchers, with this language:—

“It is an extraordinary and, we believe, an unprecedented fact, that a barrister should be arraigned before the Benchers of his Inn for improper conduct at the very time when the Crown has been induced to raise him to the superior rank of the profession. Yet this, we understand from his own lips, was the case with Mr. Digby Seymour; and the language employed by the Benchers in their judgment, forbids us to hope that the inquiry before them was either unjust or uncalled for. We are precluded, in common with the rest of the public, from ascertaining the exact nature of the evidence adduced against Mr. Seymour; and we conceive that the Bench of the Middle Temple have acted unfairly towards the Bar, as well as unwisely as respects themselves, in withholding a full report of the accusation and the proceedings thereon. That any injustice, however, can have been done by this silence to the accused, we can hardly bring ourselves to believe; for inasmuch as Mr. Digby Seymour is in possession of the whole evidence, and could give us the benefit of a total disclosure of all the circumstances of his trial, thereby putting himself right with the public, if the facts admit of his doing so; and as, notwithstanding occasional promises of such a disclosure, he remains silent, the only reasonable conclusion at which we can arrive is, that he does not consider the publication of the whole truth as likely to improve his position. All we can do under these circumstances is to place before our readers, at one view, the various documents that have been made public on the matter, and to collect, as far as possible, the scattered gleams of light that have fallen from time to time on the dark shadows of this remarkable case. We will only premise in doing so, that whatever publicity the scandal may now have attained, is owing to Mr. Digby Seymour himself, as the Benchers had maintained an absolute silence up to the time when his speech to his constituents, on the 4th of February last, was reported in the *Times* newspaper.”

Then passing over the speech, there is set forth the judgment of the Benchers of the Middle Temple. Now it is quite impossible not to feel that that judgment casts a very severe censure on Mr. Digby Seymour; but I think this observation must be coupled with it, that

nothing is added to the facts which the judgment of the Benchers sets forth. The writer of this article does not profess to add any facts with reference to these particular matters which were the subject of inquiry, but sets out the judgment of the Benchers in the exact terms of it; and if Mr. Digby Seymour had, for the first time, seen this judgment in print in this magazine, if—the sentence having been read to him in the parliament chamber of the Middle Temple, in the absence of every one except the members of his Inn—the writer of this article had, by some means or other, got it, and had given forth to the world that which the Benchers, out of consideration for Mr. Seymour, had not intended to be published, Mr. Seymour might have had a fair ground to say, “You have done me a serious injury, by publishing a sentence, which, though it condemns me in terms of severity, was never intended, by those who passed it, to be made public to the world.” That, however, is not the position in which things stand. Unfortunately, Mr. Digby Seymour went down to his constituents at Southampton, and there found that, somehow or other, what had passed in the parliament chamber had oozed out. The writer of this article is not responsible for that. Mr. Digby Seymour’s political enemies at Southampton made (to use a hackneyed expression) “capital” of this judgment which had been passed upon him; and when he got to Southampton, he found placards stuck about, suggesting questions to be put to him, as to what had passed in the parliament chamber of the Middle Temple; and the result is, that Mr. Digby Seymour, acting under the impulse of the moment, (I do not desire to animadvert upon it to his disadvantage,) gives publicity to the whole thing himself. He makes a long and violent speech; he comes back to London; he writes a letter to the *Times*; he writes a protest to the Benchers, and sends the whole matter for publication. The writers of this article, therefore, cannot be complained of as having been the first to give publicity to the charges which had been made against Mr. Seymour, and to the censure which had been passed upon him by the Benchers; but they do this—they give those charges, they give the sentence, and then comment upon them, certainly, in severe terms; but it is for you to say whether the severity of the comment is not borne out by the severity of the censure. But they do more; they insert all the documents which have appeared, so that their readers may judge for themselves: they insert all the documents to which publicity had been given in the whole course of the proceedings subsequent to the sentence of the Benchers; Mr. Digby Seymour’s letter to the *Times*, Mr. Digby Seymour’s protest to the Benchers, Mr. Digby Seymour’s

speech to the electors of Southampton, are all set forth *in extenso* in this article. So far, therefore, as relates to that part of the matter, I am at a loss to see of what Mr. Digby Seymour could fairly complain. If we once arrive at the conclusion that this was matter which might be fairly brought before the public on the ground of Mr. Seymour's position as a member of the Bar, and as a person holding a judicial office, to say nothing of his occupying a political position as a Member of Parliament, it is difficult to see how they could have been brought before the public in a more fair or just manner than they have been, barring an observation appended to these documents after they have been given in detail, to which I shall call your attention in a moment. Well, they give the whole, and then they make their comments. Now, before you can form a proper estimate as to whether those comments are fair and legitimate, as being made by a public writer on a public man, with reference to a matter of so much moment as these charges before the Benchers, you must see what the charges are, and what are the terms of the sentence pronounced by the Benchers. Unfortunately, except so far as you can collect from the documents produced and put forward to the public by Mr. Seymour, and the sentence of the Benchers of the Middle Temple, you have not the charges in any precise and intelligible form before you at all; but certainly you find that, according to the terms of the sentence of the Benchers of the Middle Temple, there was, in their opinion, very grave cause for censure and animadversion in the conduct of Mr. Seymour, in the matter of the charges that had been brought against him. Now, really, I think that, in order to see whether the writer of this article has had his mind imbued with a spirit of hostility, and bitterness, and malice towards Mr. Seymour, you ought to consider the position in which Mr. Seymour stood; because you must do justice to both sides. One can quite understand that Mr. Seymour may have been wounded and pained by these animadversions; and yet, on the other hand, you must consider how far a public writer, dealing with a question of this kind, is, or is not, entitled to take the sentence which has been pronounced, as the basis on which to found the observations he is about to make. This is the sentence:—

“The Masters of the Bench have carefully considered the voluminous evidence and documents which have been brought before them, and have come to the conclusion that the charges in the case of ‘Parker,’ ‘Coutts,’ and of ‘Robertson,’ respectively, are not proved; and that the charge as to a proposal to hold briefs for an attorney in liquidation of his costs payable by you, is proved. The facts and circumstances

which are disclosed fully satisfy the Masters of the Bench of the necessity for this inquiry; and they regret to add that they cannot accompany their intimation to you of their decision on the three charges first named with any declaration that your conduct is not liable to censure; on the contrary, they have the painful duty to perform of stating to you that they find much worthy of severe condemnation, even on the most favourable construction of your actions; that, in Parker's case, on your own statement of your conduct, evidence appears of a want of open dealing towards, and of concealment from, Mr. Parker. Mr. Parker's agreement with you, on your own version of it, was inconsistent with your substitution of your credit for the money you undertook to add to his own, and with the use of his money for any purpose unconnected with the printing scheme. The breach of your agreement in these two respects was not communicated to Mr. Parker, whose consent alone could have justified the course to which you actually resorted. The Masters of the Bench are also under the painful necessity of declaring their opinion that the settlement of Mr. Parker's action, while the charges of fraud included in it were, in the opinion of the Bench, not only not withdrawn, but were strongly re-asserted, as it was conduct calculated to destroy character by exciting suspicions that charges which were not boldly met could not be gainsaid, was an arrangement to which a right-minded man, even in the hour of heavy pecuniary distress, would not have submitted. They are compelled to add that no solid ground presents itself on the evidence in justification of the affidavit which was made by you for the purpose of postponing the trial of the action in question."

Then there are observations which are not of the same importance with regard to Captain Robertson's case; and then they come to the matter relating to the offer to an attorney to pay that attorney's costs by accepting briefs, on which the fees were not to be paid, but were to go in satisfaction of that attorney's claim. The Benchers say:—

"It is conduct, therefore, promoting deception, and likely to generate suspicion where confidence should prevail. If such a practice were tolerated, it would lower the character and honour of both branches of the profession, and would be injurious to the public, not only by reason of such debasement, but also by its tendency to introduce into, or maintain in the practice of their profession, men more distinguished by the pliancy of their principles than by the gifts of nature improved by an industrious and honest pursuit of eminence by honourable means."

Now it is impossible, as it strikes me, to read that sentence, and not to feel that it does carry with it condemnation and censure of a very serious character indeed; it suggests that Mr. Seymour, having received money from Mr. Parker for some purpose common to them both, applied and appropriated that money to his own use

and for his own purposes, as well as the other matters which are adverted to in the course of that sentence. Now if that was so, and Mr. Seymour was in the position of a public man, whose character, although with reference to his private transactions, if thought inconsistent with his public position, was open to animadversion, and the censure of the Benchers is given in the terms in which it had been pronounced, and in which it had been made public to the world, is that a fair matter of complaint? That, I think, would depend upon the circumstances in which it is dealt with. If to the facts stated by the Masters of the Bench, the writer had added facts of his own, he would, undoubtedly, have been responsible for those facts; but if he merely comes forward and says:—"Here is a censure, pronounced by a tribunal of competent authority, made public to the world, affecting the character of a publicman; we bring it forward and say that the man on whom that censure has been passed, and who takes no step to vindicate himself, either by publishing the evidence, and thereby showing that the judgment was fallacious, and ought not to have been pronounced, or by an appeal to a superior jurisdiction, is open to public animadversion, and is not fit to occupy the position of a Barrister, or the position of a Judge, or the position of a Member of Parliament"—Is there anything in that calumnious, or libellous, or beyond the legitimate scope of a public writer? That is a matter for you to consider. You will be very much influenced, I doubt not, by the comments which are made on such a sentence thus given forth to the world. I have already read to you what they say with reference to the contest between Mr. Digby Seymour and the Benchers, as to whether his protest or their sentence ought to have credence given to it; and they say that, until Mr. Digby Seymour takes some step to vindicate himself effectually from the judgment of the Benchers, they must take that sentence to be in accordance with the facts which were before them. Having set out the judgment, and Mr. Digby Seymour's letter and protest, they make these observations, to which I will now ask your attention.

"It is not our intention to enter into any consideration of the specific charges brought against Mr. Digby Seymour, because, like the rest of the public, we are not yet in possession of the means for deciding on their impartiality with a full knowledge of the facts. When we consider that we have on the one hand the deliberate opinion of a number of honourable and distinguished men who have gone fully into the case, and on the other the bare assertion of innocence by an interested person, who declines to take the plain course of publishing a complete statement of the circumstances, and

that person one who publicly stated that the Benchers had given a verdict in his favour, when he held their condemnation in his hands, we cannot hesitate for a moment as to the verdict we must pronounce. Until Mr. Digby Seymour has shown to the public, by a full and ungarbled publication of the evidence given before the Benchers, that their judgment was unjust, we must continue to believe that it was delivered in accordance with the truth, and that the censure therein was merited. Nor is our conviction in the slightest degree shaken by Mr. Seymour's claim to 'a crown of martyrdom,' or by his continually repeated, and never redeemed promise of placing himself right before the world by a public vindication. The last time he has had recourse to this expedient, now thoroughly worn out, was on the 4th of April last, in a letter to the *Times*, which we extract here:—

I do not read the letter in the *Times*, but I go on with what they say—

“The statement which appeared in the newspaper referred to by Mr. Seymour was certainly incorrect.”

That relates to the proceeding before the Northern Circuit; it is as to their not having expelled him from the Bar, but simply from the Bar mess. Then, having discussed that, they come, at last, to the question of the conduct of the Benchers; and upon that they pronounce a very strong opinion adverse to that body. That is not the subject matter of inquiry to-day; nor do I desire to express any opinion upon it myself; I therefore pass it over.

“We cannot, however, concur in the idea that investigations before the Benchers into the conduct of every accused member of the Bar should necessarily be held in public. The adoption of such a rule would, we think, be a great evil. The jurisdiction of the Bench is exercised in what has been justly termed ‘a domestic forum,’ and the nature of such a tribunal is essentially different from that of an ordinary court of law. To parade questions of etiquette, and even of morality, before the public, would be often unjust to the accused, and would add no security to the discipline of the profession. But we are alive to the mischief occasionally produced by the present practice, especially when an unscrupulous man makes capital out of the very privacy which has alone saved him from utter ruin. Perhaps it would be well to give to the accused in all cases the option of a public hearing.”

Now those are the observations made upon the sentence of the Benchers of the Middle Temple. I have already pointed out to you that no exception can possibly be taken to the manner in which the defendant, or the writer of this article, for which the defendant is responsible, brings before the public the various documents, from

the sentence of the Benchers down to the last letter and protest published by Mr. Digby Seymour. They are all set forth in this article, and I do not myself see that there is any attempt to add any facts in addition to those stated by the Benchers in their sentence, with reference to these charges which formed the subject matter of inquiry before them. Then the writer proceeds with his comments, and says:—"True it is that Mr. Seymour protests; true it is that he denies the propriety of the censure which has been pronounced upon him; but until he takes the course which is open to him for his self-vindication, by bringing before the public the whole of the evidence which was taken, and of which he is in possession, so long as there is nothing but his contrary assertion to meet the sentence which has been pronounced upon him, so long we shall take the liberty to believe that that sentence is well founded, and that the facts upon which it proceeds are to be taken to be true."

It is said that the defendant has not justified; that is, that he has not put upon the record a plea that all the matters referred to in this sentence were true. I own I think there is great force in the observations of the learned counsel for the defendant as to that; take, for instance, the case of a man occupying a high public position who might be charged with some offence and be brought before a jury of his country for trial, and a verdict passes against him; take the case of a man whose conduct is involved in some judicial inquiry, even in a civil suit, in which he is plaintiff or defendant, and in which it transpires that his conduct has been unbecoming, not only of a public man, but of a private individual; a sentence is passed, or a verdict is given against him, and a public writer, assuming that sentence to be well founded, or assuming that verdict to be right, comments upon that which has become matter of public notoriety and public observation:—"I do not assume the facts; I do not state them to be so, but I state that this individual, upon whose public character I am now commenting, has been found guilty of a specific offence, or has been declared by a verdict of a jury to be a dishonest man, because he has not paid his debts." The writer comments on that which, for the present, is taken as an admitted and ascertained fact; he may qualify his observations by saying, "What I say is open still to this,—that the individual thus circumstanced may have his sentence reversed, or may have the verdict which affected him set aside; but upon the assumption that there has been a sentence or a verdict pronounced by a tribunal of competent jurisdiction and authority, I make my observations."

If the matter is within the province of a public writer to discuss, what say you ; Is he justified in assuming that that which has been pronounced by a competent authority is to be taken as a fact, at all events until the contrary should be made to appear, or, if he comments upon that which has thus become public property, is he to be held responsible in an action for libel unless he is prepared to take upon himself the burthen of proof, although it may involve him in an inquiry of great magnitude, expense, and difficulty ? That seems to me to be the proposition contended for by Mr. Lush. It was competent to the defendant, they say, to put a plea of justification on the record, and establish the truth of the facts alleged by the Benchers in their censure ; in short, to prove to your satisfaction that the sentence pronounced by the Benchers was a proper sentence. I do not know whether you will entertain that view of the matter. The question, as it seems to me, for you to consider is, whether the observations which have been made upon this subject are or are not within the sphere of legitimate and proper observation, or whether the writer of this article has imported new facts, or drawn unwarrantable conclusions from the sentence that has been pronounced by the Benchers adversely to Mr. Seymour.

Now, gentlemen, having got so far, we are in a position to refer to the opening observations which have been so ably commented upon by Mr. Lush on the part of the plaintiff ; and certainly the language used in the article is very strong, and one cannot but regret that a public writer, even if acting within the proper scope of his employment and duty, should not have been more guarded and more moderate in the expressions he used. At the same time, it is certainly open to the observation made by the learned counsel for the defendant, (who addressed to you one of the most eloquent speeches it has ever been my lot to hear in this Court,) that the writer of this article did not proceed to attack Mr. Digby Seymour until Mr. Digby Seymour had attacked the Bar of the Northern Circuit ; and certainly a man who comes into a court of justice to hold another responsible for a hostile attack upon himself, should, in order to entitle himself to the most favourable consideration of a jury, appear before them with reference to the subject matter of inquiry as a man who has not been unnecessarily and wantonly lavish in animadversion and abuse on others. Now how does Mr. Digby Seymour present himself before you ? He goes down to Southampton, and there he is provoked into a sudden and not unnatural fit of temper and indignation, by finding that that which was intended at all events to have been a private censure passed upon him by the Benchers of the

Middle Temple had been bruited abroad, and had been made use of by his opponents, and was about to be flung in his face before a public assembly of the electors of Southampton. If he had complained of that being done,—if he had sought simply to defend himself, and had said, “These are matters which ought not to be gone into, because they are concluded by what passed before the Benchers, or if they are gone into at all it should only be by the publication of the evidence, or by an appeal to the judges, if the thing is open to appeal”—if he had confined himself to that, I quite understand that he would have done no more than it would have been natural for any man to do under the circumstances; but he goes further, he makes attacks upon the Bar, and upon the Benchers of his Inn, which I have no doubt when the writer of this article sat down to pen it were present to his mind, and which provoked a certain amount of indignation against Mr. Digby Seymour, not unnatural in the writer of this article, who, I think, without in the most remote degree knowing who he was, we may pretty fairly assume to have been a member of the Bar. Now he goes down to Southampton, and he makes this speech:—

“Gentlemen, I have now been nearly sixteen years at the Bar. I never won a laurel and never obtained a promotion without a severe and arduous struggle. I came among the members of the Northern Circuit with that misfortune which my countryman, Grattan, has described, I came ‘with the curse of Swift upon me,’ I was an Irishman. I was made from my earliest time the mark of a cruel and jealous opposition, and a determined effort to keep me down if it were possible. But, gentlemen, their efforts failed. Step by step I vanquished one difficulty and another, and won by degrees the honours which I have received, and the dignities which I hold. I obtained a lead at my sessions; I obtained the best Recordership but one on the Northern Circuit; I obtained my rank a short time ago from two judges, themselves formerly members of the Northern Circuit, of Palatine precedence at Liverpool; and finally, notwithstanding all my traducers—ay, and at the very time when detraction was doing its worst, I received the rank of her Majesty’s Counsel from the hands of the late Lord Chancellor Campbell.”

Then he says, with reference to the charges which had been brought against him before the Benchers of the Middle Temple:—

“Gentlemen, the charges, as they are called, which were brought against me, arose out of matters, the youngest of which is seven years old, and the others dated back actually to ten years ago. The men who instigated these charges never showed their faces—my real accusers never appeared; but, beginning with the efforts of a few

individuals on my own Circuit, scandals were whispered about, which at last, by some means or other, which I have not been able as yet to detect or expose, led to the investigation by the Benchers of my Inn."

Then he says :—

"I have gone over the various points which, fairly or unfairly, have been pressed upon your attention, and upon which I have come down, though late, to Southampton in the honest hope that I might receive from you a verdict, such as would tell at once to the public that whatever cruelty I have encountered elsewhere," (that must have referred either to his own Circuit or to the Benchers by whom the charges against him had been investigated,) "however, the dirty fingers of certain members of my own profession have been employed in raking up the scandals of the past for the purpose of dragging up something to damage my repute, yet that you sympathised with your representative, that you accepted the result, that you saw me still the member of an honourable profession, in spite of malice, and jealousy, and of political hate, still holding the rank which by such hard struggles I attained; and that you would by your determination, and by your pronounced opinion to-night, trample for ever upon this cruel attempt to call public attention to a matter which hitherto, at least, has been confined to a more limited circle, and has never yet been brought forth and laid before the glare of public day."

Now, gentlemen, it is impossible not to see that Mr. Digby Seymour is there charging the Bar of the Northern Circuit with having set their faces against him, from the earliest time of his becoming an active member of his profession on that Circuit; that they did that from the mean and miserable motive of keeping out an Irishman from fair competition with themselves; and that, having failed to prevent him from competing with them and succeeding amongst them, certain members, at all events, of that Circuit have put forth scandalous charges against him—have had recourse to mean and despicable contrivances to injure his character, to prevent his success and promotion, and to crush him. Now, your attention has been very properly called to the fact that, on the Northern Circuit, at the time when Mr. Digby Seymour joined it, there were four or five Irishmen standing high on that Circuit, and distinguished among the distinguished individuals there. Mr. Baron Martin, Mr. Justice Hill, Mr. Baron Watson, Mr. Serjeant Murphy, and others, whose names have been adverted to, were all members of that Circuit; and to say that any Circuit like the Northern Circuit would set their faces against a man because he was an Irishman, is

an assumption which I hope and trust, though Mr. Seymour may have laboured under some such hallucination, no man of common sense would ever entertain for a moment. Some of the most distinguished individuals who ever adorned the Bar have been Irishmen; some of the most distinguished members of it at the present moment are Irishmen; and I am quite sure that if they were asked, they would not tell you that they had ever met with anything but a generous rivalry on the part of Englishmen. Mr. Seymour may have deceived himself with this notion. A man sometimes gets into an unpleasant position with those with whom he is called on to associate: it is the consequence, very often, of accident or misunderstanding; and the result is, that instead of attributing it to his own fault, his own want of manner, or his own want of powers of conciliation, he ascribes it to jealousy, envy, rivalry, and all sorts of sinister motives. He deceives himself. But if he makes these charges against others, and puts them forward, in that way imputing to them unworthy and scandalous motives, he must not be over sensitive if he is attacked himself. But it does not remain there. Mr. Seymour had this case inquired into before the Benchers of the Middle Temple. Having heard the names of the gentlemen who sat upon the inquiry, as to whom, I need not tell you they are some of the most distinguished members of the English Bar, can you conceive that those gentlemen were actuated by any other desire than that of doing their duty honestly and fairly? Yet, what was the course that Mr. Seymour pursued? Waiving, as he tells you he did, all objection to the constitution of the tribunal, when his own attention was called to the fact, that on one occasion the numbers were not complete; instead of saying, when, at all events, upon the ninth meeting, he was aware of the fact, that the numbers ought always to be kept up to a certain point, "I object to your going on, for on more than one occasion the same members have not been present, and I do not think that reading the evidence is the same thing as hearing the witnesses;" he waives the objection, and goes on with the inquiry. The evidence is all taken, and the case is ripe for decision. Even then it was still open to Mr. Seymour to take the exception that he took afterwards, and he might have said, "Your tribunal has been irregularly constituted, and I object to members who have not been present throughout all the details of the proceeding passing sentence one way or the other." He does no such thing, however; he awaits the sentence, and yet, although there is a judgment of acquittal as to the main charges, there being appended to the judgment or sentence a censure upon Mr. Digby Seymour, Mr.

Seymour sends in a protest, and he also writes to the *Times*, and publishes the sentence; and then we must see how far in these papers which he afterwards publishes, he provokes, by his own animadversion upon the motives and conduct of others, hostile and severe animadversions upon himself. He writes to the *Times*, and he begins thus:—

“The Benchers of the Middle Temple are pursuing to the last the same course they adopted towards me from the first.” What does that mean? “They have ‘screened’ and published their ‘judgment,’ but they have thought proper to suppress my protest. I appeal to you to supply this significant omission, and request you will publish the documents I enclose. There are other grave matters between myself and the Bench, not detailed in this protest, which the publication of the whole proceedings will reveal to the eyes of the profession and the public. I say of ‘the whole proceedings,’ because the printed report furnished to me is not complete. It does not contain all the ‘evidence’ and ‘proceedings’ of the tenth meeting. It does not contain the whole of the documentary evidence put in by myself or my Counsel, Mr. Lush, Q.C. It does not contain the names of the Benchers who voted for or against the various portions of this judgment. This is no longer a case for any half publicity. I am now, by the very act of the Benchers themselves, entitled to have what I demand—the whole truth made known, ungarbled and unabridged.”

Then comes the protest, which is also sent to the *Times*, and which is in these terms; in the first place it goes through the different cases, commenting upon those cases and excepting to the observations or judgment pronounced by the Benchers respecting them. Having done that at considerable length, he appends this:—

“Upon the last paragraph of your judgment, I wish simply to say that I think, having frankly admitted an error, these observations might have been spared,” (that is with reference to his not taking his fees,) “the more so as the Bench must bear in mind that I was placed, as regarded Mr. Brown, in the difficult position in which honesty pointed one way and etiquette another. There is another subject to which I feel bound to call your attention. You have held fifteen meetings, and in no single instance has your parliament been composed a second time of the same members as any previous parliament. In point of fact, therefore, I have been tried before fifteen different tribunals. Your numbers have been equally irregular, varying from a maximum of eighteen to a minimum of seven. One of your number first attended at the fifth meeting, one first at the sixth, two at the ninth, two at the tenth, and one at the thirteenth. The following is an analysis of the attendance of all the Bench.”

Then he goes through the analysis. And then he says:—

“Here is certainly a remarkable disregard both of the spirit and

letter of the wise rule of the society which requires the attendance of the same members on every adjourned hearing of an inquiry into an accusation against a barrister. I have no right to penetrate the secrets of your chamber, but I confess I should like to know how many of those who heard the evidence of Mr. Parker and his witnesses took part, and, if so, what part, in framing or supporting the observations made with reference to that case. I appeal to those members of the Bench who were present at the third meeting, whether the mode in which the evidence of Mr. Parker especially was given did not strongly impress their minds with the impossibility of seriously regarding it. The perusal, more or less careful, of printed evidence (even were it of the most accurate character) can never supply the place of opinions derived from the hearing of the witnesses themselves; and I cannot help feeling that I have been hardly dealt with if members of the Bench who have only formed their conclusions upon the printed reports, intermixed and confused as the various cases are, have joined in reflections which, I firmly believe, would not have been made, or would have been greatly modified, had they attended the inquiry with greater regularity. It may of course be said that my attention was called to this rule, and that I ought, on subsequent occasions to have made objections on the ground of its non-observance; but my attention was not called to this rule till as late as the ninth meeting, though it ought to have been mentioned on the second, and it is obvious that it would, at that time, have placed me in a most invidious attitude to have appealed to this rule with reference to any Benchman I might have objected to. I could not, moreover, for a moment have anticipated that members of the Bench who had not heard the evidence as to any particular case would have suggested observations, or even joined in a judgment, with reference to that case, of the fairness of which they were not, from this very circumstance, in a proper position to decide. On this ground, as well as those I have before specified, I beg to enter my solemn protest against that part of your judgment which contains the observations of which I complain, and which, I rejoice to know, have not received the unanimous approval of the Bench; and I request that this letter may be recorded along with the judgment."

He complains now not only of the tribunal and the irregularity of its composition, but he complains that his protest was not screened together with the judgment; and I must say I think that a more idle complaint never was preferred. In the first place, unless a man is going to appeal from a sentence, I do not understand a protest. The Benchmen were either a competent tribunal to deal with the matter or they were not. If they were not, of course it was for Mr. Seymour to except to their jurisdiction, and say that the matter was not properly within it; but if they were, their sentence, unless reversed on appeal, is conclusive. True, if a sentence affects a man's

character he has a right to say, "I will appeal to the public ; and the mode in which I will appeal to the public is, by publishing the whole proceedings in the case, with such observations as I think I am fairly entitled to make upon the decision or judgment ; but to ask the Benchers to screen this long protest at the same time, as their judgment, I confess, appears to me to be a very unreasonable demand. Here, gentlemen, you have the whole of the proceedings before you, and I think you cannot help seeing that Mr. Digby Seymour did animadvert, both in his speech at Southampton, and also in this protest, and in his letters, very strongly upon the conduct and motives, not only of the Northern Circuit, but of the Benchers of the Middle Temple, before whom this inquiry was conducted. I see, also, that in his speech at Southampton he makes this observation upon the gentlemen of the Bench who were his judges.

"I was upon fifteen different occasions before the Benchers of my Inn, and I stood practically before fifteen different tribunals, because upon no two occasions were my judges the same. The examinations were conducted within closed doors. I would to God they had been conducted in the broad light of day, and before the face of my constituents and the country ; they were conducted by men sitting down after dinner, varying in their numbers and attendance, and sometimes postponing the inquiry upon the most trivial grounds. But, gentlemen, whatever feelings were entertained towards me originally, there were many among those Benchers who, I believe, were men of the highest honour, imbued with the spirit of justice, and actuated by feelings of generosity ; and to them mainly, and to their indignation at the monstrous wrongs which I was enduring, I believe I owe at last the verdict, which even my interrogator will not deny has been given in my favour."

Now, it is quite clear from that, that he has made observations derogatory to the propriety of conduct, and the motives as well as the decision of the Benchers of the Inn, before whom this inquiry was conducted, speaking of them as men who, instead of holding their sittings by day, sat after dinner, came in and went out as was most convenient to themselves, did not attend to the proceedings as they ought to have done, and finally gave a judgment, (though there were honourable men among them,) many of them from unworthy motives. Those are serious charges, and I cannot help thinking that it would have been better, if Mr. Digby Seymour had been dissatisfied with this sentence of the Benchers, that he should either at once have had recourse to the straightforward mode of publishing the whole of the proceedings, leaving the public to form their own judgment, with any observations he might have thought it right to

make, or that he should have tried what would have been the effect of an appeal to the Judges. You have been told something about his having been advised that an appeal would not lie. It is not for me to say whether it would or would not, because that question might have come before me in my judicial character as one of the Judges of this Court to decide ; but I cannot help saying this,—that if he had taken the course of trying that question, he would, at least, have shut out the writer of this article from many of the observations which he has made use of ; and it is for you, gentlemen, before you finally determine as to how far this language, to which I am about to call your attention, and which in general terms of sweeping censure denounces Mr. Digby Seymour,—how far much of that language, (if you should think it beyond the limits of fair and proper criticism, and therefore libellous, and that which calls upon you for a verdict in favour of the plaintiff,) may not have given rise to these observations, and provoked them, from a sense with which the writer's mind was imbued of the wholesale way in which Mr. Digby Seymour, in his defence against the effect of this censure of the Benchers, was sowing broadcast aspersions on men of the highest character and honour in the profession of the Law. Certainly the language is very strong, and I call your attention to it.

“ Mr. Digby Seymour has lately informed his constituents that he was born an Irishman; but we should have thought that this information, to any one even slightly acquainted with the honourable member, was altogether superfluous. He likewise attributes to his nationality the bitter hostility with which, as he alleges, he was at first received, and has since been maligned and persecuted by his brethren on the Northern Circuit. He came among us, as he says, with ‘ the curse of Swift upon him,’ and gives us to understand that nothing but his unrivalled genius and purity of character could have enabled him to survive and triumph over this natal calamity. Whatever credence we may wish to attach to every statement conveyed in the mild and measured language of Mr. Digby Seymour, we must take exception to the idea that Irish birth constitutes any disqualification for professional popularity or success. An eminent Englishman, himself an ornament to his *alma mater*, when recently comparing in a public address the achievements of the various universities in the United Kingdom, paid a high compliment to Trinity College, Dublin; and as a proof of the rare training given at that seat of learning, he adduced, among other instances, the fact that no less than five out of the fifteen Judges occupying the Bench had received their education in that famous university of Ireland. We believe that only four out of the five are Hibernian by birth,”

“ of the five is my brother Crompton—although educated in he is not an Irishman) “ but so large a proportion of Irish-

men in the highest judicial position, and the well-earned success of many others from our sister island in the ranks of the Bar, are proof enough that the career of the profession is fair and open to all the Queen's subjects. But it is only just to Mr. Digby Seymour to admit that there are two kinds of Irishmen, and that the cordiality extended to the one is by no means secure to the other. There is the Irish gentlemen, generous, accomplished, and urbane—perhaps the highest type of the genus gentleman to be found in the United Kingdom. There is also the Irish blackguard; swaggering, foul-mouthed, and shameless; the most insolent of upstarts, the most unblushing of swindlers; never destitute of a quarrel, never at a loss for a lie. For as the Irish gentleman is of rare quality, so the Irish blackguard is consummate in his growth. Ireland is always great in extremes, more especially in her psychological productions. She has reared generals who have led their armies to certain victory, and she has reared also the tribe of cabbage-garden heroes. She has adorned our Parliament with splendid orators and consummate statesmen, and has afflicted it also with a breed of bawling demagogues and venal fools. And so it happens that this green and prolific island, with the singular versatility of her race, has supplied to the Bar of England some of its brightest ornaments, and some of its blackest sheep; bestowing on the former a learning and eloquence which Englishmen are proud to admire, and enriching the latter with a power of impudence, and a fertility in fraud which defy all description as (to the uninitiated intellect) they pass all knowledge. Should one of this latter flock find his way to an English Circuit, it could hardly be considered a matter for legitimate surprise if he should become an object of suspicion and dislike, and '*hic niger est*' be the motto coupled with his name."

Now, I think it is impossible to shut one's eyes to the fact that all that has special application to Mr. Digby Seymour. It is much of it general in its terms, but it is evidently pointed to one individual. The distinction between the Irish gentleman and the Irish blackguard admits of easy and immediate application; and so does the difference between the consummate statesman and orator and the bawling demagogue and venal fool, though that is much less important. You may call a man a fool or a demagogue if you are so minded, but when you come to talk of the brightest ornament of the Bar in contrast with its blackest sheep, and the learning and eloquence which Englishmen are proud to admire, and enriching the latter with a power of impudence and a fertility in fraud, which defy all description, I must confess that that is language of considerable strength, and of considerable violence. Its meaning it is for you to determine. If it was meant by that, Here is a gentleman who has been compelled to submit to the ordeal of an

examination before the Benchers of his Inn, in a matter touching most seriously his conduct as a man of probity and honour, and who has been the subject of severe animadversion and censure, arising out of those transactions, and then, not satisfied with bowing to the decision or appealing against it—not satisfied with the opportunity of challenging either public attention to the injustice of the sentence or appealing against it if an appeal be open to him, or submitting to it in a contrite spirit, with a determination to wash out the stain by a life of honour in time to come,—if instead of that he denounces those who passed that censure upon him as unjust judges actuated by sinister and unworthy motives,—if he ascribes the charges to the jealousy and hostility of a Circuit, or the members of it, who he says have persecuted him with bitter malignity and cruelty because he is an Irishman, we say that a man who under those circumstances adopts that line of conduct, is a man whom we may term “a blackguard, swaggering, foul mouthed, and shameless,” and to whom may be justly applied the very strong language that is used in this article.

If you think that that is what is meant, you will make allowance for the language that is used, looking to the circumstances in which the writer was placed by the attacks which Mr. Digby Seymour himself had made on other people, and the way in which he had cast aspersions upon them. If you think that it meant more; that instead of being satisfied with saying “Here is a censure of the Benchers, we advert to that censure, and we say that Mr. Digby Seymour, unless he can get rid of that censure by showing that the evidence did not warrant it, or unless he can get rid of it by means of an appeal, must be considered as having been justly blameable to the extent to which the Benchers have blamed him, and if he was so, he is open to have it said of him that his character as a public man has been tarnished, and to have the propriety of his position as a public man questioned,” if going beyond that they take upon themselves to say, without warrant and without authority, that he is “fertile in fraud, and the most accomplished of swindlers,” it is for you to say how far, under those circumstances, you may think him entitled to your verdict, on the ground that this writer has transgressed the bounds within which a writer canvassing the character of a public man ought still to be confined, or has made the opportunity available for the purpose of gratifying a bitter and vindictive spirit of hostility towards Mr. Digby Seymour. The matter is entirely one for you, gentlemen. If you think that in this case, instead of being a fair, reasonable, honest, and *bonâ fide* comment on the cir-

cumstances relating to Mr. Digby Seymour, this has been made the opportunity of gratifying personal vindictiveness and hostility towards him, and that the writer transgressed altogether the legitimate bounds, it will be for you to show your sense of that by your verdict. I quite agree with what has been said by my brother Shée, that this is no occasion on which to review and revise the sentence pronounced by the Benchers. You have not the materials before you. If that was Mr. Digby Seymour's motive in having recourse to this action, I think it is to be regretted that he should have resorted to it instead of taking some other proceedings in which the merits of the sentence might have been legitimately canvassed.

Gentlemen, the case is entirely for you. You will say whether you think this article contains matter which is libellous for which the writer, or those who are responsible for the writer, ought justly to be held liable. If so, you will say what damages you think are sufficient to compensate Mr. Digby Seymour for any injury he may have sustained; but you will not decide the question of damages, if you think that is a question which you are called on to entertain, without considering the circumstances of provocation which may have excited the indignation of this writer, and led him to apply to Mr. Digby Seymour language which, but for the attacks that that gentleman has made upon others, possibly never would have been used.

The jury retired to consider their verdict at half-past three o'clock p.m., and returned into Court at five minutes past five.

THE ASSOCIATE :—Gentlemen, have you agreed upon your verdict?

FOREMAN OF THE JURY :—We have.

THE ASSOCIATE :—Do you find for the plaintiff, or for the defendant?

FOREMAN OF THE JURY :—For the plaintiff.

THE ASSOCIATE :—With what damages?

FOREMAN OF THE JURY :—Forty Shillings.

REMARKS.

We have given, in the foregoing pages, a full and accurate report, from the notes of the shorthand writer, of the whole proceedings in the trial of the issue raised by Mr. William Digby Seymour against the Publisher of this Magazine. In thus printing, at a considerable sacrifice of space, the summing

up of the Chief Justice, the speeches of counsel, the questions and answers in examination, and even the casual observations made during the trial, unabridged even by the omission of a syllable, we are only pursuing to the end the course with which we commenced this painful business. Chief Justice Cockburn did us no more than right, when he observed that nothing could be fairer than the way in which we had placed before the profession Mr. Seymour's unhappy case. The article on which that gentleman was so ill-advised as to found the suit which has terminated in a manner so little satisfactory to himself, was, to reiterate the words employed by us on a former occasion, "a fair and reasonable comment on notorious facts, written with the same knowledge of the circumstances as the whole public possessed, mis-stating nothing, suppressing nothing, and consisting in a great degree of materials supplied by Mr. Digby Seymour himself." We, in fact, scrupulously collected all the oral and documentary testimony of his own character and conduct which Mr. Seymour, in the spring of last year, lavished on the world. We gave that letter of his to the *Times* which denied that he had been expelled from the Northern Circuit, and which omitted the fact that he had ceased to be a member of its Bar Mess. We gave without curtailment his protest against the judgment of the Benchers. We gave in all its truthfulness and modesty his defence before his constituents at Southampton. We narrated his history, so far as it is known to the public, and as it is generally reported at the Bar. If the evidences with which his tongue and pen had so industriously supplied us were otherwise than pleasing to Mr. Seymour, this result was no fault of ours. Nor was it our fault that we failed to supply the public with further and fuller information. We are not to blame because the Benchers of the Middle Temple persistently resolved, for reasons good or bad, to withhold the publication of the evidence given against Mr. Seymour, nor because the explanatory statement of that gentleman was unprinted, or inaccessible at the time of the

publication of our article.* We did what we could ; we published all that came to our hands ; we set down certain notorious facts ; we commented upon those facts and the evidences in language that we never used before, and trust that our duty will never again compel us to employ concerning any member of the profession, least of all a Recorder and a Queen's Counsel ; and we cheerfully accepted the verdict which assessed that language at the sum of forty shillings when applied to the character and career of Mr. Digby Seymour.

But before dismissing the subject from our pages, we are bound to set our readers right on one point at least which affects the character of this periodical. It was insinuated by Mr. Lush, more than once in his observations to the jury, that the article on Mr. Seymour was written by some one who was actuated by a bitter personal hostility against him, who was a member of his Circuit, and one at least of the instigators of the proceedings before the Benchers. We are informed, moreover, that some days before the trial, and during its progress, the name of a barrister on whom it was thought convenient to fix, and to whom "internal evidence" was supposed to point, was sedulously circulated in Westminster Hall as that of the author of the article. The idea was no new one with Mr. Seymour, whose singular idiosyncrasy it is to believe or to represent himself the injured object of an envious conspiracy laid by all the eminent members of his profession ; who has imputed to the Northern Circuit a "cruel opposition and a determined effort to keep him down ;" who has accused the Benchers of the Middle Temple of "injustice," and of making "every presumption against him ;" and who will probably, in

* Mr. Lush asserted that the statement had been circulated before the publication of our article ; i.e., before the 1st of May, 1862. We are confident that the learned counsel must have been mistaken in his dates ; we cannot ascertain that any one saw or heard of the pamphlet until some time after this. To this hour, as far as we are aware, it has not been published, nor has any copy reached our hands which has not been marked "for private circulation only." We may observe that the pamphlet does not contain the whole of the evidence before the Benchers, and that what does appear is not printed in a connected form.

letter of the wise rule of the society which requires the attendance of the same members on every adjourned hearing of an inquiry into an accusation against a barrister. I have no right to penetrate the secrets of your chamber, but I confess I should like to know how many of those who heard the evidence of Mr. Parker and his witnesses took part, and, if so, what part, in framing or supporting the observations made with reference to that case. I appeal to those members of the Bench who were present at the third meeting, whether the mode in which the evidence of Mr. Parker especially was given did not strongly impress their minds with the impossibility of seriously regarding it. The perusal, more or less careful, of printed evidence (even were it of the most accurate character) can never supply the place of opinions derived from the hearing of the witnesses themselves; and I cannot help feeling that I have been hardly dealt with if members of the Bench who have only formed their conclusions upon the printed reports, intermixed and confused as the various cases are, have joined in reflections which, I firmly believe, would not have been made, or would have been greatly modified, had they attended the inquiry with greater regularity. It may of course be said that my attention was called to this rule, and that I ought, on subsequent occasions to have made objections on the ground of its non-observance; but my attention was not called to this rule till as late as the ninth meeting, though it ought to have been mentioned on the second, and it is obvious that it would, at that time, have placed me in a most invidious attitude to have appealed to this rule with reference to any Benchman I might have objected to. I could not, moreover, for a moment have anticipated that members of the Bench who had not heard the evidence as to any particular case would have suggested observations, or even joined in a judgment, with reference to that case, of the fairness of which they were not, from this very circumstance, in a proper position to decide. On this ground, as well as those I have before specified, I beg to enter my solemn protest against that part of your judgment which contains the observations of which I complain, and which, I rejoice to know, have not received the unanimous approval of the Bench; and I request that this letter may be recorded along with the judgment."

He complains now not only of the tribunal and the irregularity of its composition, but he complains that his protest was not screened together with the judgment; and I must say I think that a more idle complaint never was preferred. In the first place, unless a man is going to appeal from a sentence, I do not understand a protest. The Benchers were either a competent tribunal to deal with the matter or they were not. If they were not, of course it was for Mr. Seymour to except to their jurisdiction, and say that the matter was not properly within it; but if they were, their sentence, unless reversed on appeal, is conclusive. True, if a sentence affects a man's

character he has a right to say, "I will appeal to the public; and the mode in which I will appeal to the public is, by publishing the whole proceedings in the case, with such observations as I think I am fairly entitled to make upon the decision or judgment; but to ask the Benchers to screen this long protest at the same time, as their judgment, I confess, appears to me to be a very unreasonable demand. Here, gentlemen, you have the whole of the proceedings before you, and I think you cannot help seeing that Mr. Digby Seymour did animadvert, both in his speech at Southampton, and also in this protest, and in his letters, very strongly upon the conduct and motives, not only of the Northern Circuit, but of the Benchers of the Middle Temple, before whom this inquiry was conducted. I see, also, that in his speech at Southampton he makes this observation upon the gentlemen of the Bench who were his judges.

"I was upon fifteen different occasions before the Benchers of my Inn, and I stood practically before fifteen different tribunals, because upon no two occasions were my judges the same. The examinations were conducted within closed doors. I would to God they had been conducted in the broad light of day, and before the face of my constituents and the country; they were conducted by men sitting down after dinner, varying in their numbers and attendance, and sometimes postponing the inquiry upon the most trivial grounds. But, gentlemen, whatever feelings were entertained towards me originally, there were many among those Benchers who, I believe, were men of the highest honour, imbued with the spirit of justice, and actuated by feelings of generosity; and to them mainly, and to their indignation at the monstrous wrongs which I was enduring, I believe I owe at last the verdict, which even my interrogator will not deny has been given in my favour."

Now, it is quite clear from that, that he has made observations derogatory to the propriety of conduct, and the motives as well as the decision of the Benchers of the Inn, before whom this inquiry was conducted, speaking of them as men who, instead of holding their sittings by day, sat after dinner, came in and went out as was most convenient to themselves, did not attend to the proceedings as they ought to have done, and finally gave a judgment, (though there were honourable men among them,) many of them from unworthy motives. Those are serious charges, and I cannot help thinking that it would have been better, if Mr. Digby Seymour had been dissatisfied with this sentence of the Benchers, that he should either at once have had recourse to the straightforward mode of publishing the whole of the proceedings, leaving the public to form their own judgment, with any observations he might have thought it right to

make, or that he should have tried what would have been the effect of an appeal to the Judges. You have been told something about his having been advised that an appeal would not lie. It is not for me to say whether it would or would not, because that question might have come before me in my judicial character as one of the Judges of this Court to decide ; but I cannot help saying this,—that if he had taken the course of trying that question, he would, at least, have shut out the writer of this article from many of the observations which he has made use of ; and it is for you, gentlemen, before you finally determine as to how far this language, to which I am about to call your attention, and which in general terms of sweeping censure denounces Mr. Digby Seymour,—how far much of that language, (if you should think it beyond the limits of fair and proper criticism, and therefore libellous, and that which calls upon you for a verdict in favour of the plaintiff,) may not have given rise to these observations, and provoked them, from a sense with which the writer's mind was imbued of the wholesale way in which Mr. Digby Seymour, in his defence against the effect of this censure of the Benchers, was sowing broadcast aspersions on men of the highest character and honour in the profession of the Law. Certainly the language is very strong, and I call your attention to it.

“Mr. Digby Seymour has lately informed his constituents that he was born an Irishman; but we should have thought that this information, to any one even slightly acquainted with the honourable member, was altogether superfluous. He likewise attributes to his nationality the bitter hostility with which, as he alleges, he was at first received, and has since been maligned and persecuted by his brethren on the Northern Circuit. He came among us, as he says, with ‘the curse of Swift upon him,’ and gives us to understand that nothing but his unrivalled genius and purity of character could have enabled him to survive and triumph over this natal calamity. Whatever credence we may wish to attach to every statement conveyed in the mild and measured language of Mr. Digby Seymour, we must take exception to the idea that Irish birth constitutes any disqualification for professional popularity or success. An eminent Englishman, himself an ornament to his *alma mater*, when recently comparing in a public address the achievements of the various universities in the United Kingdom, paid a high compliment to Trinity College, Dublin; and as a proof of the rare training given at that seat of learning, he adduced, among other instances, the fact that no less than five out of the fifteen Judges occupying the Bench had received their education in that famous university of Ireland. We believe that only four out of the five are Hibernian by birth,” (one of the five is my brother Crompton—although educated in Dublin, he is not an Irishman) “but so large a proportion of Irish-

men in the highest judicial position, and the well-earned success of many others from our sister island in the ranks of the Bar, are proof enough that the career of the profession is fair and open to all the Queen's subjects. But it is only just to Mr. Digby Seymour to admit that there are two kinds of Irishmen, and that the cordiality extended to the one is by no means secure to the other. There is the Irish gentlemen, generous, accomplished, and urbane—perhaps the highest type of the genus gentleman to be found in the United Kingdom. There is also the Irish blackguard; swaggering, foul-mouthed, and shameless; the most insolent of upstarts, the most unblushing of swindlers; never destitute of a quarrel, never at a loss for a lie. For as the Irish gentleman is of rare quality, so the Irish blackguard is consummate in his growth. Ireland is always great in extremes, more especially in her psychological productions. She has reared generals who have led their armies to certain victory, and she has reared also the tribe of cabbage-garden heroes. She has adorned our Parliament with splendid orators and consummate statesmen, and has afflicted it also with a breed of bawling demagogues and venal fools. And so it happens that this green and prolific island, with the singular versatility of her race, has supplied to the Bar of England some of its brightest ornaments, and some of its blackest sheep; bestowing on the former a learning and eloquence which Englishmen are proud to admire, and enriching the latter with a power of impudence, and a fertility in fraud which defy all description as (to the uninitiated intellect) they pass all knowledge. Should one of this latter flock find his way to an English Circuit, it could hardly be considered a matter for legitimate surprise if he should become an object of suspicion and dislike, and '*hic niger est*' be the motto coupled with his name."

Now, I think it is impossible to shut one's eyes to the fact that all that has special application to Mr. Digby Seymour. It is much of it general in its terms, but it is evidently pointed to one individual. The distinction between the Irish gentleman and the Irish blackguard admits of easy and immediate application; and so does the difference between the consummate statesman and orator and the bawling demagogue and venal fool, though that is much less important. You may call a man a fool or a demagogue if you are so minded, but when you come to talk of the brightest ornament of the Bar in contrast with its blackest sheep, and the learning and eloquence which Englishmen are proud to admire, and enriching the latter with a power of impudence and a fertility in fraud, which defy all description, I must confess that that is language of considerable strength, and of considerable violence. Its meaning it is for you to determine. If it was meant by that, Here is a gentleman who has been compelled to submit to the ordeal of an

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it was done in order that the lord might raise no hedge, and might make no several pasture in the fallow field to exclude the cattle of the tenantry.*

The Saxon boor, in addition to grasserth, ploughed three acres of gafolyrthe; that is, ploughing done in satisfaction of his gafol or rent, as well as three acres of benyrthe, or optional tillage, done as a *boon* to the lord,—done out of grace and kindness, not in the way of duty. The terms, averherthe, gavilherth, grashearth, and benerth or bedhurth, were used as late as the time of Edward the Second; and the exact phrases employed in the old Saxon laws of Landright to describe the services of benerth and grasserth recur in rentals of the fourteenth century.†

* to-eacan tham iii æceras to bene and ii to gærs-yrthe, gyf he maran gærses betyrfe thonne earnige thæs sva him man thafige. (*Laws of Landright*).

quelibet caruca debet arare duas acras quod vocatur Greserthe et pro illa arura debent omnes communicare infra dominicum absque gravimine. (2 Hundred Rolls, 754, also 761.)

In crastino S. Martini . . . debent convenire super herbosam terram domini et congregare tot caracas boum quot poterunt de suis propriis et arare cum unaquaque caruca iiii acras dicte terre et ibunt ad curiam domini Abbatis propter semen ad dictam terram seminand' et illam terram seminabunt et cum caballis suis eandem terram herciabunt et notandum quod propter predictum servitium omnes predicti viri habebunt tot boves quot habent proprios pascentes cum bobus dominicis ubique post falcationem pratorum usque presepe ligentur. (Add. 17450, f. 43 b.)

venient omnes carucæ infra villam de Pydinton ad arandam terram Domini uno die quem eligere voluerit Ballivus infra quatuor dies proxime post Festum Sancti Michaelis, per summonitionem Ballivi vel Præpositi, quod vocatur Grashearth: et hac ratione quod Dominus hayam nec pasturam separabilem faciet ab hominibus infra campum warectabilem. . . . (Kennet, 495.)

† His gafol-yrthe iii æceras erige . . . iii æceras to bene (*Laws of Landright*.)

De qualibet caruca arant unam acram de 'auerherthe . . . Item sunt x acr' et di' de Gavilherth . . . Item de qualibet caruca i acr' de Greserth. (Add. 6159, ff. 24 b, 28.)

tenebit unam carucam ad quaslibet sea precarias arare que vocantur Benerthe. (2 Clutterbuck's Herts App.)

arabit ad Bedurtham et Gresurtham.—(Add. 17450, ff. 164 b, 168.)

pro amore non pro debito. (Customale Roffense.)

iii acras precum et duas de herbagio (ii to gærs-yrthe). (*Laws of Landright*.)

ii acras de Gersherde et iii acras ad preces. (Add. 6159, f. 161 b.)

Under the name of the *Laws of Landright*, we cite the document usually called *Rectitudines Singularum Personarum*.

Bedrip is of course a compound of béd (a prayer or petition) and ríp (harvest). Bedrip was optional service in the harvest field; compulsory reaping was called nedrip or nedirip, (necessary reaping,) perhaps also called gavilripp.*

The kindly services rendered to the lord in seedtime and harvest were otherwise called precatious, (preces, precaria, precationes,) gifel-works, and love-boons.† The days on which they were rendered used to be called boon-days, and occasionally love-days; a love-day more commonly meant a law-day, a day set apart for a leet or manorial court, a day of final concord and reconciliation:—

Now is the loveday mad of as fowre fynially,
Now may we leve in pes as we were wonte:
Misericordia et Veritas obviaverunt sibi,
Justitia et Pax osculatæ sunt.—(*Coventry Mysteries.*)

A large part of the lord's arable land was entirely cultivated by the tenantry. The customary tenants at Cokefield, near Bury, ploughed 200 acres of the demesne in a year. The dominical plough-lands there consisted of 333 acres. We need not suppose that the tenants ploughed up two-thirds of this area; they ploughed each acre more than once; and the

* *Biddath* thæs *ripes* hlaforð, thæt he sende wyrhtan to his *ripe*. (Pray ye, therefore, the Lord of the harvest, that he will send forth labourers into his harvest.)

benyrthe, id est araturam precum, et benripe id est ad preces metere et pratum falcare. (Laws of Landright.)

Benerth is defined by Sir Edward Coke. (Co. Litt. 86 a.) There are many strange compounds in the rentals. Lage erthe or laverthe. (Dom. S. P. lxvi. 3.) Gavilripp. (Add. 6159, f. 172 b.) Nedripp, nedirip. (2 Hundred Rolls, 765, 766, bis.) Metebedripe and Middeleyesrype (2 H. R. 723.) Hingbidripe. (Spelman—Bidripa.) Hungeryvedripp. (Spelman—Precariae.) Wytebedripe. (2 H. R. 515.) Wedbedrep and bountebedrep. (Harl. 3977, f. 108.) Wardbedrep. (f. 86 b.) Wardacras. (Dom. S. P. 72.)

† opera scilicet de dono que vocantur yeuelwerkes. (Add. 6160, f. 74 b.) precar quam vocant luwebene. (Harl. 3977, f. 91.)

facit xiii loue bones et valent xiii^d. (2 H. R. 492.) Love-boons, that is the voluntary labour of the inhabitants of the neighbouring townships. (1 Nicolson and Burn, 525.)

The truce between the Yorkists and Lancastrians in 1458 was called a Love-day.

record means that their labour was equal to the single tillage of 200 acres.*

In large manors a *benerth*, or arable precatation, was a matter of difficult arrangement. It was the reeve's duty to ascertain whether a tenant intended to do the service, or chose rather to pay for a substitute. Bond tenants, free tenants of bond land, and freehold tenants alike took part in these operations. The reeve had to deal with persons of both sexes and of all conditions. Some of the contributors of labour were knights, and gentlemen, and ladies of quality; others were independent yeomen, surly farmers, and poor widows. The gathering of the ploughs must have made a remarkable sight. Soon after dawn, on the appointed day, the tenants met the lord's officers in the field. Tenants who came without oxen were employed in delving and in making fences; tenants who came with single oxen, or with less than an entire team, were associated with others; and thus all the oxen and cart-horses present were sorted in teams of about eight animals. The teams were marshalled by the beadle, who carried his wand of office, not quite a bare symbol of authority, for we dare say it

* *omnes tenentes ejusdem villatæ debent quater venire per annum ad pastum domini ad precarias carucarum; illi scilicet qui carucas habent per se vel junctas cum aliis, et qui nullum istorum habent per ordinacionem servientis vel Bedelli curie claudent sepes et hujusmodi.* (Dom. S. P. 86.)

To erie his half acre holpen hym manie;

Dikeres and delveres digged up the balkes . . . (*Piers Plowman*.)

carucas dominicas adeat, custumarias, et adjutrices, prospiciens quod antequam dietam suam plenè paraverint, minime disjungentur. (2 Fleta, 73.)

arabunt terram domini in dicto manerio eodem modo et in tantum quo terram propriam absque fictione. (Kennet, 320.)

Debet arare ter in anno sine cibo domini, quæ vocatur laverthe et semel in anno ad cibum domini quæ vocatur *benerthe*. (Dom. S. P. lxvi.) *falcant* usque ad vesperam. . . et tunc habent *corrodium*. (Baldon-Book.) *sarclare*. . . usque ad horam nonam et si dominus illum pascit usque ad vesperam. (Add. 17450, f. 25.)

veniet ad *Beneharvyng* cum equo suo. (2 Clutterbuck's Herts, Hatfield.) quilibet equus hercians habebit qualibet die tantum de avenis, sicut capi potest inter duas manus. (Spelman, *Precariæ*.) tres pugillatas avene ad equum suum. (Dom. S. P. 34.)

venit ad iii Bedweding. (Add. 17450, f. 96 b.)

was used upon inert husbandmen, as well as upon inert oxen. The reeve took care that each team did its full work *absque fictione*, without pretence; that the ploughmen worked as well for the lord as they would work for themselves; and that the teams were not unyoked until the work had been fairly done. The day's work was supposed to be complete at the ninth hour, three in the afternoon according to our reckoning. This hour was called nones, or high noon, and a meal then taken was called a noonshun or nuncheon. Some of the ploughmen engaged in an arable precation had a meal from the lord, but there was no regular feast; a tenant employed in the lord's service was not usually *ad cibum domini*, that is, entitled to a meal, unless the service kept him occupied an entire day. A boon-harrowing, with horses, succeeded the benerth; each horse that harrowed was allowed two or three handfuls of oats. In due time there followed a bedwedding, or weeding boon.*

A bedrip, reaping boon, or autumnal precation, was even a more pompous festival than an arable precation. In old times, as at the present day, the harvest was made a season of merriment, if not of thanksgiving:—

In tyme of hervest mery it is ynough;
The hayward bloweth mery his horne,
In eueryche felde ripe is corne.—(*Romance of King Alisander*.)

In the illustrations of an old Saxon Calendar, in the Cotton Library, the hayward is shown standing on a hillock, cheering the reapers with his horn. Slumbering reapers were roused by the sound of a horn in Tusser's time; and the custom of blowing horns at harvest endured until the end of the last

* Dominus Johannes Terell miles. . . mittet duos homines ad magnam precariam ad cibum domini et unum overman. (Add. 14850, f. 63 b.)
cum omni familia domus excepta Husewiva. (Boldon-Book, passim.)
cum omni familia præter hospitissam. (3 Monasticon, 318.)
preter uxorem suam que custodiet domum suam. (2 Hundred Rolls, 636.)
debent invenire omnes servientes suos locatos per annum excopta uxora sua et nutrice et pastore ad ii precarias. (2 H. R. 748.)

century, for it is noticed by John Scott, of Amwell. In the thirteenth century, when the rentals were mostly compiled, the lord was aided in harvest, as in seed time, by tenants of all ranks. A superior tenant rarely sent more than two men to the bedrip, or two men and an *overman*, that is a foreman. A customary tenant in some places was bound to appear on the grandest day with his whole family, excepting the housewife, who stayed at home and span; sometimes, excepting the shepherd and the nurse as well as their mistress.* At Elae-field, near Oxford, in the year 1279, all the men who held yardlands, and all who held half-yardlands, came to two autumnal precatons, each of them with one man; and to the third precaton each of them came with his whole family, excepting his wife and shepherd, and was regaled by the lord on this third day,—not on the two former days; and all the customary tenants were obliged to ride beyond the lord's crops, to see that they were reaped safe and well. They rode in saddles, with bridles and spurs; if they failed in any part of this equipment, they were fined. These mounted overseers were called reap-reeves. In the time of Edward the Third, the tenant of an estate called Fawkner Field was bound to ride among the reapers in the lord's demesnes, at Isleworth, on the bederepe day, in autumn, with a sparrow-hawk upon his wrist.† The officers of the court were entitled to a share of the crop. In some places, the sicklemen received a work-sheaf each; each man was expected to reap half an acre, called a deywine (day-win) or day's labour.† In the accounts

* Et omnes custumarii equitabunt ultra blada domine salvo et bene metenda. Et equitabunt in sellis cum frenis et calcaribus. Si quid eis defecerit de atillo amerciabuntur. (2 H. R. 720.)

debet esse ripereve per iiii dies ad mensam domini. (693.)

Repe, other be a repe-reyve and arise erliche. (2 Wright's Plowman, 513.)
faciet iii precarias dicto Priori et i lovebon' et veniet ipse cum virga (2 H. R. 626.)

Blount. Frag. Ant. 323.

† habebunt quolibet die i garbam inter se omnes separand' que appellatur workcef. (2 Hundred Rolls, 85.)

of the tenures at Bocking, in Essex, there is a curious estimate of the cost of these autumnal precatations. The expense of the food provided for the reapers is weighed against the value of their work, and the balance in the lord's favour is found to be five pence and three farthings. The said tenants ought to find at the two bedrippes in autumn 146 men, and these works will be worth twenty-seven shillings and eight pence, at two pence each man. Towards the doing of these works, the said tenants will have five seams and three bushels of wheat and rye, worth at the average price of corn seventeen shillings and eleven pence; moreover, they will have at the first bedrip, a carcase of beef, worth five shillings; and they will have at the second bedrip, two hundred herrings, worth twelve pence; then they will have at the first and second bedrip twenty-one cheeses and a half, worth 2s. 9½d., the price of each cheese being a penny halfpenny; they will have two bushels of peas, which may be estimated at 5d., salt and garlic at a penny. And, therefore, the lord clears out of the two bedrips, five pence, one halfpenny, and one farthing. In this case the treatment of the reapers was rather poor; it was no more than a dry bedrip. It would have been a wet bedrip, or an ale bedrip, if the lord had allowed good liquor.* A yardlander at Chalgrave, in Oxfordshire, reaped at the two precatations in autumn with all his household but his wife and shepherd; if he brought three labourers, he walked with his

metet per vi dies videlicet qualibet die dimidiam acram quod servicium vocatur Deywine. (779 and see 602.)

* Item debent dicti tenentes invenire ad duos bedrippes in autumnno cxi. et sex homines et valent dicta opera xxvii⁸ viii⁴ pr⁸ hominis ii ad quæ opera facienda habebunt dicti tenentes quinque summas et tres busellos de frumento et siligine et valet dictum bladum per communem æstimacionem xvii⁸ xi⁴. Item habebunt ad primum bedripp unum Carcoys bovis precii v⁸ habebunt eciam ad secundum Bedrip ce allec⁸ precii xii⁸. Item habebunt ad primum et ad secundum bedripp viginti et unum caseos et dimidium et valent ii⁸ ix⁴. qū prec⁸ casei i⁴ ob⁸ habebunt et ad primum et ad secundum bedripp duos busellos pisarum et valent per estimacionem v⁴. Item habebunt sal et all pr⁸ i⁴ et sic remanent domino de claro de duobus bedripp⁸ v o.⁸ q.⁸ (Add. 6159, f. 189.)

Ad omnes precarias veniet tam siccas quam madidas. . . (Dom. S. P. 66.)

rod, or rode, in front of the reapers; if he brought no labourers, he worked in person; for two repasts, at nones, a wheaten loaf, pottage, meat, and salt; at supper, bread and cheese and beer, and enough of it, with a candle while the guests were inclined to sit.* The last day of the bedrips was always the grand day. At Piddington, the tenants and their wives came on that day with napkins, dishea, platters, cups, and other necessary things.†

Tenants in old times were required to cut and clear the lord's hay-field. A tenant at Badbury was bound to mow the lord's meadow for one day, receiving a meal of bread and cheese twice in the course of the day; and was afterwards to carry the same meadow, receiving a rickle, or bundle of hay, for his pains. The mowers, also, received among them either twelve pence, or a sheep, which they were to choose out of the lord's fold by sight, and not by touch. In other places, a mower was allowed haveroc', that is, as much grass as he could raise upon his scythe, without breaking its handle; and a haymaker received a perch of hay, called in English soylon, or a portion of hay called in English a yelm, which was as much as he could grasp with both arms. At Sturminster, a tenant, after Langmead had been mown and carried, received haveroc' and medknice', that is, a knitch of hay, as much hay as the hayward could raise with one finger to the height of his knee.

In the year 1308, it was the rule at Borley that the mowers and haymakers should have two bushels of wheat for bread, a wether worth eighteen pence, a gallon of butter, the second best cheese out of the lord's dairy, salt and oatmeal for their

* metet ad ii precarias in autumpno cum tota familia operant' preter uxorem et bercarium et si habeat iii homines operantes ibit cum virga sua vel equitabit ultra metentes et si neminem habeat operantem personaliter operabit ad duo repasta scilicet ad nonam panem de frumento potagium arnem et sal et ad cenam panem caseum et cervisiam et sufficienciam et nadel' dum sedere voluerint. (2 Hundred Rolls, 768.)

† ad prandium secunda die venient ipsi et uxores eorum cum mappis, discis, paropsidibus, cyphis, et aliis necessariis. (Kennet, 495.)

pottage, and the morning's milk of all the cows; a mower received for every day's math as much grass as he could lift upon the point of his scythe. In 1222, each mower at Wickham, in Essex, had a loaf and a half to himself; and they had, in common, a cheese and a good ram.* A sheep was very commonly the reward of work in the hay-field. Old English husbandmen were very fond of mutton, and the hay-harvest falls about St. John's day, when mutton was considered in season.†

Sheep-shearing was another service imposed upon the tenantry. Although it must be hard and heavy work to wash

* *habebunt de consuetudine quod vocatur medsaïpe ii multones secundos meliores in ovile domini, vel ii loco prædictorum ii multonum.* (2 Hund. Rolla, 756.)

unum diem ad pratum Domini falcandum ad cibum Domini, vel Dominus dabit quadraginta denarios pro metteshep. (Kennet, 495.)

falcare per unum diem pratum et habere coredium suam de curia bis in die scilicet panem et caseum et levare idem pratum et habebit inde unum richel et debet dicta Alicia et alii qui sunt de eadem tenura de qua ipsa est habere xii^o illo die quo falcant domino vel unam ovem de faldia domini quamcunque elegerint sed per visum et non per tactum. (Add. 17450, f. 27 b.)

Rickle—heap of stones or peats, etc.—(Waverley Glossary.)

... a rickle of houses. . . (Monastery, c. xiii.)

quando falcet pratum domini debet habere haueroc' scilicet tantum de herba quantum poterit cum manco falcis sue levare et quando levat pratum domini debet habere unam perticam feni quod anglice dicitur soylon. (Add. 17450, f. 28.)

quando levat pratum domini habebit unam particulam feni quod anglice dicitur zulm. (f. 183 b.)

Ifley] debent spargere fena domini et levare et quilibet eorum habebit die quo operabitur unam quantitatem feni cum rastell' factam que Anglice dicitur Yelm. (2 Hund. Rolla, 712.)

Yelm, as much corn in the straw as can be embraced with both arms. (Leicestershire Glossary, by the Rev. Dr. Evans.)

carabit fenum domini per unum diem cum i carecta et habebit per stipendia in vespere quantum poterit imbraciare de feno. (2 H. R. 775.)

medkniche, scilicet tantum de feno quantum hayward poterit levare cum medio digito suo usque ad genua sua. (Add. 17450, f. 39 b, 40 b, 41 b.)

Et sciendum quod quandoque ipse cum aliis custumariis ville falcaverint pratum . . . habebunt ex consuetudine iii bussellos frumenti ad panem et unum hurtard precii xviii^o et i lagenam butyri et unum caseum ex daeria domini post meliorem et sal et farnam auene pro potagio suo et totum lac matutinale de omnibus vaccis totius daerie ad ipsum tempus . . . Et habebit pro quolibet opere falcationis tantum de herbagio viridi cum falcaverit quantum poterit levare super punctum falce sue . . . (Add. 6159, f. 20 b.)

† *entur la seynt Johan les vendet kar dunk est char de moton en seyson.* (Walter de Henlee, Add. 6159.)

and shear sheep, in the thirteenth century it was done by women, who are called shepsters in the "Vision" of Piers Plowman. The sheep were washed in the mill-pond. The miller at Ashbury, who held a yard-land with his mill, was required to wash the lord's sheep, and to be at the shearing, and to wind the lord's wool. Shearers were usually entitled to the wambelocks, or loose locks of wool under the belly of the sheep; at Weston, in Oxfordshire, a shearer had the wambelocks, or a penny instead of them.* The finest part of the fleece is the wool about the sheep's throat, called in Scotland the haslock or hawsel-locks:—

A tartan plaid, spun of good hawselock woo',
Scarlet and green the sets, the borders blew.—(*The Gentle Shepherd*.)

Up in the North, they call a sheep-shearing the clipping-time. To come in clipping-time is to come as opportunely as he who visits a farmer at sheep-shearing, when there is always mirth and good cheer. In 1279, the shearers at Swincombe, in Oxfordshire, had a new cheese in common, and each man had a loaf, and half a loaf instead of a lamb.† In the time of Henry Best, the middle of the seventeenth century, clippers always expected a joint of roasted mutton. There is an account of the good things usually furnished for a sheep-shearing feast two or three hundred years ago, in Brand's "Popular Antiquities," but there is no reference in Brand to an old drama called "The Winter's Tale:—

* ad oves lavand' et tondend' unam mulierem inveniet. (2 Hundred Rolls, 759 bis.)

Debet invenire unam tonsatricem in tempore tonsionis. (Delisle's Norm. Agri. 82.)

Clipping is in the Channel Islands performed by women, slowly but neatly. (Report, 183.)

debet lavare oves domini et esse ad tonsionem vel involvere lanam domini. (Add. 17450, f. 172 b.)

tondere oves et habere Wambelokes. (Dom. S. P. 47, 91.)

adjuvabit tondere et lavare oves dicti Simonis et habebit wambelok scilicet quilibet eorum, vel quilibet habebit unum denar'. (2 H. R. 817.)

† debet et lavare et tondere oves cum i homine et habere caseum illius diei in communi et i panem et pro agno dim' panem. (2 H. R. 758 bis.)

“ Let me see,” ponders the clown,—“ what am I to buy for our sheep-shearing feast ? Three pounds of sugar, five pounds of currants, rice,—what will this sister of mine do with rice ? But my father hath made her mistress of the feast, and she lays it on. . . . I must have saffron, to colour the warden pies ; mace ; dates,—none ! That’s out of my note. Nutmegs, seven ; a race or two of ginger,—but that I may beg ; four pounds of prunes, and as many of raisins o’ the sun.”

There is a good description of a modern sheep-shearing feast among the poems of Clare, whence we learn that the fanciful arguments in the Third Scene of the Fourth Act of “ *The Winter’s Tale* ” are not altogether unlike the things intended to be said on such an occasion. But festivals so gracefully conducted are uncommon, through the want of a disguised princess to do the honours.

The old customs of clipping-time were observed by Sir Moyle Finch, at Walton, near Wetherby, in the time of Charles the First, and are thus described by Henry Best :—

“ Hee hath usually fower severall keepinges shorne altogether in the Hall-garth. . . . He hath had 49 clippers all at once, and their wage is, to each man 12*d.* a day, and when they have done, beere and bread and cheese ; the traylers have 6*d.* a day, His tenants the graingers are tyed to come themselves, and winde the woll ; they have a fatte weather and a fatte lambe killed, and a dinner provided for their paines ; there will be usually three score or fower score poore folkes gatheringe up the lockes ; to oversee whom standeth the steward and two or three of his friends or servants, with each of them a rodde in his hande ; there are two to carry away the woll, and weigh the woll soe soone as it is wounde up, and another that setteth it downe ever as it is weighed ; there is 6*d.* allowed to a piper for playing to the clippers all the day ; the shepheards have each of them his bell-weather’s fleece ;”*

* Best’s Farming Book, 21, 97.

—the “belflys” allowed to the shepherd by the old Saxon Laws of Landright.*

In the reign of Henry the Third, the ploughmen and other officers, at East Monkton, between Warminster and Shaftesbury, were allowed a ram for a feast on the Eve of St. John the Baptist, when they used to *carry fire round the lord's corn*. This form of the Beltane superstition was observed in the north of England and in Scotland about fifty years ago. The Beltane flourishes at the uttermost ends of Europe, in the Scilly Islands, and in Russia; and even the man of Madagascar, who holds his head to other stars, is accustomed to kindle bonfires on the day which we have dedicated to St. John. We learn from the “Popular Antiquities,” that, not long ago, in Gloucestershire and Herefordshire, on the eve of Twelfth-day, fires used to be lit at the end of the lands, in fields just sown with wheat. This seems to be the custom just now noticed as extant in Wiltshire under Henry the Third, slightly varied, and transferred from the summer to the winter solstice, or from the feast of St. John the Baptist to that of St. John the Evangelist.†

At Christmas, tenants and other dependants in many places received from the lord an allowance of firewood, called the Christmas-stock or Christmas-brand; and at this time their poultry rents and other donations were usually due: in the Hundred Rolls of Huntingdonshire, donations at Christmas

* Scape-hyrdes riht is thæt he hæbbe . . . 1 bel-flys—i.e. timpani vellus. (Laws of Landright.)

† Item Carucarii et alii Wykemanni debent habere i multonem et ferre ignem circa bladum domini in vigilia Nativitatis beati Johannis Baptiste. (Add. 17450, f. 215 b.)

In vigilia enim beati Johannis colligunt pueri in quibusdam regionibus ossa, et quædam alia immunda, et insimul cremant, et exinde producitur fumus in ære. Faciunt etiam brandas et circunt arva cum brandis. (Harl. 2345, f. 50. 1 Sax. in Eng. 361.)

Three Visits to Madagascar, 127.

1 Brand and Ellis, 33, 310, 337.

Die möglichkeit einer vermischung der beiden Johannes im Mittelalter, die Grimm, S. 358, andeutet, halte ich für gewiss. . . (Leo, Ortsnamen, 205.)

are called *lok* or *loksilver*. A tenant at Huntercombe, in Oxfordshire, on the feast of our Lord's Nativity, was bound to give to his lord a loaf, with a penny half-penny, a gallon and a half of ale, a cock and a hen; and then on the same day the said John and his wife, with another person—*unus alius*—whom they might choose to bring with them, were to dine with the lord. In most of the manors of Glastonbury Abbey, the bailiffs and chief tenants dined in hall on Christmas day, receiving bread and beer, meat and pottage; some of the tenants could bring their wives and a third person with them; they were required to furnish their own cups and dishes, and a napkin or table-cloth if they wished to eat from a cloth; they brought likewise a bundle of wood to cook their pottage, unless they chose to have it undressed. This entertainment was called a *Ghest*; it was to be done liberally and in good style. The tenant of a yardland at Pennard, near Glastonbury, could have at his gest or revel on Christmas day ten loaves and ten pieces of meat—five of pork and five of beef—and he could have at the same gest ten men drinking after dinner in the lord's hall.* There was never more revelling and

* Debet habet Wdetale contra Natale scilicet unum truncum. (Add. 17450, f. 39.)

Debent prætereā habere ii fagos contra Natale ad ignem extraditione tantum prepositi nostri. (Add. 6159, f. 160 b.) Isti debent habere cristemessetokkes contra natale domini. (Harl. 3977, f. 110 b.) Debent predicti tres habere truncum ligneum contra natale Domini, qui Anglice dicitur Christemesse brand. (Custumale Roffense.)

De dono ad lardar' ad natale xxviii sol'. (Add. 17450, f. 27 b.) dat ad lok ad Nat' Domini iiii gallinas et unum panem prec' iiii^a et prandebit cum domino. (2 H. R. 635.)

Lác—Ang. Sax. a gift, an offering.

cariabit boscum domini contra natale per ii dies ad cibum domini et dabit exenn' contra Natale vi panes precii iiii^a et vi lagen' cervisie precii iiii^a et iiii gallinas et ii gallos et veniet ad prandium pro predicto exennio sexta manu si voluerit. (2 H. R. 781.)

dabit exennium domino ad natale iiii panes albos et iiii gallones cervisie et i gallum et ii gallinas et debet comedere cum domino ipse et tota familia sua. (785.)

debet habere Ghestum suum ad natale in curia domini ipse et uxor sua scilicet ii albos panes et ii fercula carnis et cervisiam sufficienter et honorifice et clera et debet portare secum discum et cifum et mappam et debet portare ante natale i fascem de busca ad escam suam coquendam quod si non fecerit habebit olera sua cruda. (Add. 17450, f. 39, 45 b.) debet ipse

confusion in an ancient hall than at Christmas. Let us fancy the noise, and the smoke and steam :—cooks dressing meat as though they were mad ; hounds lapping blood and fighting for bones ; men and women crowding, laughing, squabbling, talking all at once ; lords and ladies gazing at the scene from the upper part of the hall ; no wonder that they grew tired of it in time, and were glad to keep Christmas in their withdrawing rooms.*

The “waits,” who disturb our slumbers at Christmas, are the successors of certain old watchmen, who were bound by their tenure to keep watch in the lord’s hall from Christmas until Twelfth-day. In the middle of the thirteenth century, a tenant at Winterborne was bound, with another of the same tenure, to watch the lord’s court by night, whenever and as long as it should please the lord or the bailiff, and on the morrow was allowed a dishful of wheat. In one of the manors of St. Paul’s Cathedral, a tenant was appointed to watch at the court from Christmas to Twelfth-day, to keep a good fire in the hall, and he received a white loaf, a cooked dish, and a gallon of ale. Sums paid on account of Yule-waiting are entered three or four times in Boldon-Book.†

et uxor sua et garcio suus habere ghestum . . . debet habere ghestum ad natale se tercio. (f. 46 b.) Franciscus de Pennard tenet i virg’ et i ferling’ . . . et debet habere gestum suum ad natale scilicet x panes et x frustra carnis scilicet v de porco et v de bove et debet habere ad idem gestum x homines bibentes post prandium in curia domini. (f. 57.)

* Dreary is the hall eche day in the weke,
Ther the lord ne the lady liketh noght to sitte ;
Now hath ech riche a rule to eten by himselve
In a privee parlour, for povere mennes sake,
Or in a chamber with a chymenee, and leve the chief halle
That was made for meles, men to eten inne,
And al to spare to spende that spille shal another—

And all from motives of economy, to save wealth that some one will be sure to scatter.

† Et si dominus voluerit vel ballivus debet ipse et alius de eadem tenura vigilando custodire curiam domini de nocte quando et quocienscunque dominus vel ballivus voluerit si necesse fuerit. Et in crastino habebit unum discum plenum de frumento. (Add. 17450, f. 180 b.)

Dom. S. P. lxxiii. vigilabit circa Curiam Domini una nocte Nath’ ad cibum Domini. (34.)

In Hevedlega habet abbas iii Coterias . . . Isti debent vigilare in Curia Domini cum presens fuerit. (Tindall’s Evesham, 59.)

Christmas waits are not to be confounded with ward-men, whose duty of ward-keeping was also connected with their tenure. The wardmen were a kind of rural police. They were probably maintained on the north side of London until the institution of a general system of police in the time of Edward the First. By the Statute of Winton it was ordered that a watch should be kept by six men at each gate of a city, by twelve men in every borough, and by six men or four men in each rural township every night from the Feast of the Ascension of our Lord to the Feast of St. Nicholas. The watchmen could detain any one unknown to them; any one who would not stand and declare himself, was pursued with hue and cry—with horn and voice—

Swarming at his back the country cried.

We suppose that St. Nicholas became the patron of highwaymen, because the watch was intermitted on the day dedicated to St. Nicholas. The wardmen are occasionally noticed in the Domesday of St. Paul's. The survey of 1279 states, that at Sutton, in Middlesex, each tenant who had cattle on the lord's lands to the value of thirty pence, paid a penny at Martinmas, called wardpenny; but this tax was not due from the watchmen of the ward, who waited at night in the king's highway, and received the ward-staff—

They wared and they waked,
And the Ward so kept,
That the King was harmless,
And the country scatheless—

In Essex the wardkeepers had a rope with a bell, or more than one bell, attached to it: the rope may have been used to stop the way. The wardstaff was a type of authority, cut and carried with peculiar ceremony, and treated with great reverence.*

Sexdecim predicti villani redd' xvi sol' de Michilmeth et vi sol' de Yolwaytyng. (Boldon-Book.)

* Quolibet habens averia super terruras Domini ad valentiam xxx^s dabit

At Chingford the wardstaff was presented in court in Hock-day. This day—the second Tuesday after Easter—was another very important day in bygone times. John Ross of Warwick records, that on the death of Hardicanute, England was delivered from Danish servitude, and to commemorate this deliverance, on the day commonly called Hocktuesday, the people of the villages are accustomed to pull in parties at each end of a rope, and to indulge in other jokes.* The Hock-tide sports were kept up at Hexton in Hertfordshire in the time of Elizabeth, and are described in Clutterbuck's Hertfordshire. We notice this account of them, because it has not been noticed in the "Popular Antiquities." Hockday was usually set apart for a love-day, law-day, or court-leet. This court could be held but twice in the year, and was generally held at Hock-tide and Michaelmas, or Martinmas, since a court on these days would not interfere much with agricultural operations. The leets, like most other gatherings, ended with good cheer. In the thirteenth century, when the officers of East Monkton attended the Hundred courts at Deverell—which were held at Hocktide and Martinmas—they were allowed a loaf and a piece of meat each.† A feast following a court-leet or law-day, was

unum denarium ad festum Sancti Martini, qui vocatur Wardpeny, exceptis illis qui sunt de Ward vigilantes, qui vigilant ad regiam stratam de nocte . . . et recipient Wardestof. (Dom. S. P. lxx.)

Middleton, Camb.] Memorandum quod omnes isti prenominati tam liberi quam villani qui habent bestias pretii xxx dant domino predicto per annum i^a pro quadam consuetudine que vocatur Wartpenny. (2 Hundred Rolls, 453.)

The tale of the Ward-staff is in Palgrave's English Commonwealth; or in Blount's Fragmenta Antiquitatis, 325—332, and there is an edition of it by the late Mr. Singer in Notes and Queries.

* Hardeknuts mortuo, liberata est Anglia ex tunc a servitute Danorum. In cujus signum usque hodie, illa die, vulgariter dicta Hoxtuistday, ludunt in villis trahendo cordas partialiter, cum aliis jociis.

There are allusions to this diversion in the *Iliad*—

Τὼ δ' ἔριδος κρατερῆς καὶ ὁμοῖον πολέμοιο
πείραρ, ἐπαλλάξαντες, ἐπ' ἀμφοτέροισι τάνυσσαν.

While they of sturdy strife and of fair battle gain'd

Alternately the tug, and still between them strain'd.—(xiii. 358.)

† Item Wykemanni debent comedere apud Deverel die beati Martini quando veniunt ad hundred' et quilibet eorum habebit panem et unam

called a leet-ale or scot-ale. An ale is said to mean no more than a feast. There were leet-ales and scot-ales, church-ales, clerk-ales, bid-ales, and bride-ales. Scot-ales were often abused, and made means of extortion. The bishops, the judges, and all the king's men tried in vain to suppress them.* All persons present at a scotale paid *scot*, that is a fine, or fee: the money raised nominally furnished a feast, but was really for the benefit of the chief officer of the court—the portreeve, headborough, or thirdborough. In some places the leet-ale was not entirely supported by subscription. In Tollard, on the edge of Cranborne Chase, the steward was allowed on the law-day to have a course at a deer out of Tollard Park.* At Bovey Tracey the portreeve has the profits of a piece of ground, called Portreeve's Park, to defray the expenses of the annual revel. The Glastonbury Rental describes the mode of keeping the scotales at the Deverells, in Wiltshire, during the time of Abbot Michael, who governed Glastonbury between the years 1235 and 1252:—

All the men of Longbridge and Monkton declare that the lord can make three scotales in the year at Longbridge; and

peciam carnis in Vigilia Natalis Domini. Eodem modo habere debent ad hocke. Et ad pasch' quilibet eorum habere debet i panem et v ova et ad hund' de hockeday comedere ut supra. (Add. 17450, f. 215 b.)

* Chingesford . . . faciebat suitam hundredi de Waltham cum preposito et duobus hominibus, et veniebant homines ejusdem tenementi ad scotallam prepositi. (Dom. S. P. 144, also lxx.)

De parvis ballivis qui faciunt cervisias quas quandoque vocant Scotallas, quandoque fulstales, ut extorqueant pecuniã a sequentibus hundredum et eorum subditis; et de aliis qui cervisiam non faciunt garbas in autumnno colligentibus, et bladum pauperum indebite distrahentibus. (Burton Annals, Gale 339.)

Charta Forestæ VII. Letters of Peter de Blois. Quart. Rev. No. cxvi. Horne's Mirror, 35, Ed. 1768.

† In March 1618, Joseph Compton, of Yeovil, deposed that . . . during the tyme he was deputie Ranger of Cranborne Chase, he had been once or twice present at a Court Leete holden for the Manor of Tollard, which court was holden yearly at or near a place called Lavermere Gate, lying near to the way that divides Dorsetshire and Wiltshire, and adjoining to Tollard park; and the Steward of the said Court at the Court soe holden did challenge a Custome to have a Course at a deare out of Tollard parke . . . It was called the Tollard Lawday Course. (*Original Deposition.*)

all the married men and bachelors claim to come on the Saturday after dinner, and to drink as at cunninghale, and to be helped thrice to drink; and on Sunday the bridegroom and the bride shall come with their penny, and likewise on Monday; and the bachelors shall come on Sunday with a halfpenny, and on Monday they claim to come and to drink freely without payment, as long as they drink standing; if they sit down they must pay.*

Cunninghale was probably the name of a Guild, or festive association. The customs above described are very like the customs of ancient Guilds. By the rules of the Guild of the Holy Ghost at Abingdon (dissolved in 1547) members who sat down at dinner paid one rate, and members who stood for want of room paid another. There is a good account of the village wakes of the seventeenth century in a report addressed to Archbishop Laud by Pierce, bishop of Bath and Wells. But we cannot undertake to be chroniclers of all kinds of revelry. We have been obliged to notice Christmas-dinners and Scot-ales, because they used to be incidents of tenure.

* Omnes homines de longponte et munketun' dicunt quod dominus potest facere tres scotallas per annum in longo ponte et presunt omnes sponsi et juvenes venire die sabbati post prandium et potare sicut ad cunninghale et habebunt ter ad potandum et die dominica sponsus et sponsa venient cum denario suo et die lune similiter. Juvenes vero venient die dominica cum obolo et die lune presunt venire et potare libere sine argento, ita quod non sunt inventi sedentes super scamnum, et si inventi fuerunt dabunt argentum sicut ceteri. (Add. 17450, f. 66.)

Damerham] Item potabit iii scotalles scilicet unam ante festum Sancti Michaelis per ii dies cum uxore sua et dabit iii⁴ et si habet famulum vel famulam et undersetles quilibet dabit ob' et potabunt per unum diem. Item potabit ii scotall' post festum S. Michaelis et dabit ad unam pro se et uxore sua ii⁴ ob' et ad alteram ii⁴ et potabit per ii dies et si famulus vel famula vel undersetles venerint quisque dabit ob' per diem et si extraneus venerit dabit ob'. (f. 50.)

Lothers, near Bridport, a^o 1305] si fuerit uxoratus capiet iii lagenas cervisie vel seisare de scotallo domini, et reddet pro eis ii denarios et obolum. (Delisle, *Classe Agricole en Normandie*, 87.)

ART. III. — OUR METROPOLITAN LOCAL TRIBUNALS.

By ALEXANDER PULLING, ESQ.

THE absence of system which is characteristic of the local government of London, we can observe in the constitution of its local tribunals. The numerous Courts for the administration of justice, both in civil and criminal cases within the metropolitan area, like the municipal institutions which in former times were so freely called into existence under royal charters or special Acts of the Legislature, have their origin in a succession of patchwork attempts specially to provide for each supposed occasion during the progress of London from a walled town, covering about 700 acres, with a population half mercantile, half military, living in a labyrinth of courts and alleys, the majority being, as appears from an old proclamation, "*heaped up together, and in a sort, half smothered,*" to the majestic city of our day ; spreading over more than 120 square miles,* and containing two thousand six hundred miles of streets, flanked by three hundred and sixty thousand inhabited houses, with a population of three millions, and an assessed annual rental of £13,000,000.

Modern London embraces important portions of the four adjacent counties, and has swallowed up not only the old district which is still designated "*the City,*" and its ancient suburbs, but numberless places formerly existing as distinct towns, villages, and hamlets, which in days gone by had their separate systems of local government. The various tribunals which then served for the administration of civil and criminal justice throughout the large but unevenly peopled area so par-

* The whole area of the Metropolitan Police District is about 700 square miles.

celled out, for the most part remain, under an entirely altered state of things; and divide the jurisdiction with Courts founded on an entirely different principle, adapted perhaps to the occasion that called them into existence, but equally unsuited to the exigencies of the present day.

Our metropolitan city, from which the stream of justice flows throughout the realm, has for the purposes of judicial administration within its own area, a disadvantage in some respects compared with many other districts, and is certainly without the advantages which its own resources naturally suggest. All the superior Courts are held in London, and there is no lack of Judges and Magistrates to perform all that is required on their part, without the aid of *dilettante* dispensers of justice; and the figures already given suffice to show that within the metropolitan area we could, if necessary, have the attendance every day in the year of sufficient persons, qualified for every grade of Jurymen, to meet every requirement; and at the same time limit the obligation of each individual's attendance to once in three years: and yet under the existing practice there is a sort of scramble connected with the whole machinery of our Courts; and whilst not without reason Judges and Jurymen are continually complaining of being put to inconvenience, there is a very considerable waste of available resources, causing most unnecessary and vexatious delay, inconvenience, and expense to the suitor.

Our chief metropolitan tribunals are at this day held in the same place, and with hardly better accommodation, than was accorded to them at the date of Magna Charta, when the Common Pleas was permanently fixed at Westminster Hall.

The demand for a fitting *Palace of Justice* for the metropolis has now been so long and so urgently pressed on the attention of the Legislature, that we may shortly expect to have an appropriate building provided, with ample accommodation for the holding of all our metropolitan tribunals; and with the concentration of the Courts themselves, there can be little

difficulty in so arranging for the conduct of their proceedings that the numerous inconveniences now felt by our Judges and Jurymen, the suitors and witnesses, and by both branches of the legal profession, may be got rid of.

Under the present regulations affecting the administration of justice in London, the area and districts of the metropolis greatly vary for different purposes. The Central Criminal Court district extends over an area of more than 700 square miles, including all Middlesex, and parts of Surrey, Kent, Essex, and Hertfordshire. The Bankruptcy Court district extends much further, including all places not within any of the appointed country districts, so that it at present includes the county of Northampton; whilst for the purpose of *Nisi Prius* business the metropolis is subdivided into the "City" and the four districts formed by the adjacent counties; and for the purposes of the inferior courts, both civil and criminal, London is again arbitrarily divided into a number of districts of various areas, no one set of which agrees with another. Thus there are for the purposes of the County Court jurisdiction eight metropolitan districts, exclusive of the "City." There are eleven metropolitan Police Court districts, besides the "City;" and that ancient and privileged portion of the metropolis constitutes for most purposes a separate district, and, indeed, for all judicial purposes, instead of being treated as a portion of the metropolis, may be deemed altogether distinct from it.

With regard to the civil business, we have, at the present time, Courts of *Nisi Prius* held in Westminster Hall in and after every term by Judges of the Court of Queen's Bench for the County of Middlesex, and other *Nisi Prius* Courts for the same purpose by Common Pleas Judges and Barons of the Exchequer respectively; and immediately after the termination of the Middlesex sittings there are sittings also of each of the Courts at Guildhall, for the City of London. And we have also in a great degree, for the trial of Metropolitan cases, the Assizes held at Croydon or Kingston, Maidstone and Chelmsford, under

the Commissions of Nisi Prius, issued every spring and autumn.

In ancient times all issues in actions brought in the Superior Courts in the County of Middlesex were tried in Term, before the full Court, and were really *trials at bar*; and to remedy the inconvenience caused by this, as Middlesex came to include parts of the metropolis, it was provided, three centuries ago (18 Eliz. c. 12), that the two Chief Justices and Chief Baron should hold Nisi Prius sittings for their several Courts either during Term or the four days after. The Nisi Prius sittings for the City of London seem to have been held at Guildhall or St. Martin's-le-Grand, or some other place within the City, from a very early period, in compliance with an ancient civic privilege, that the citizens should not be required to plead in any case out of the bounds of the City.

Various statutes have from time to time extended the power of the Judges of Westminster Hall with regard to the Nisi Prius sittings for London and Middlesex. The 18 Eliz. c. 12 enabled two of the puisne Judges of any of the Courts to sit in lieu of the Chief. The 12 Geo. I. c. 31, extended the time of the sittings after Term to eight days, and the 24 Geo. II. c. 18, to fourteen; and the Common Law Procedure Act, 1854, enables any one of the Judges of the Superior Courts to sit at Nisi Prius for either of the three Courts; but it is not usual for any of the Judges at these sittings to try cases, except arising in his own Court. With the exception of Crown Office cases, which are always tried in the Court of Queen's Bench, and Revenue cases, which properly belong to the Court of Exchequer, the cases tried at these Nisi Prius sittings of the three Superior Courts are of the same character, and the only recognised classification is that into Special Jury Cases and Common Jury Cases.

The Nisi Prius sittings of London and Middlesex are under the present system held at stated times, fixed by the Judges, there being usually sixteen separate sittings for Middlesex, and

twelve for London ; in all twenty-eight distinct sittings, occupying about 130 days in the year. For the purpose of a *Nisi Prius* trial in London or Middlesex, notice of trial must be given for the first day of one of the twenty-eight appointed sittings. There may be no prospect of an actual trial at the sittings for which notice is given ; but if the suitor does not give ten days' notice before the first day of the sittings, he is too late. There is always, therefore, a sort of scramble to be in time for the most important sittings, those held after Term. A variety of circumstances generally concur to bring into the cause list for London and Middlesex a number of cases which are in no way connected with the metropolis ; and whilst the civil business of most of the circuits is decreasing, so that in some counties not half a dozen cases are entered for trial at the assizes in the year, the *Nisi Prius* business at Westminster and Guildhall exceeds that of all the circuits taken together, and almost every list necessarily contains a large number of *remanets* from the previous sittings.

Whatever may be said for or against country suitors being allowed to try their cases in London, it is clear that the formal regulations as to *Nisi Prius* business at Westminster and Guildhall do not give the London suitor the advantages he ought to possess. Again, the metropolis, for the purpose of the County Courts, is divided into eight districts ; but the exemption claimed by the "City" from the operation of this General Act, has had the effect of keeping up several courts within the privileged district. Thus there is the Lord Mayor's Court, presided over by the Recorder, with an unlimited jurisdiction, both legal and equitable, for cases which are within the City boundaries, and peculiar modes of procedure, in part derived from the ancient customs of the City of London, and in part from recent Acts of Parliament, and possessing the very peculiar power of proceeding by what is called *foreign attachment*.

There is also a Small Debts Court for the "City," in part de-

rived out of the two ancient Sheriffs' Courts, the jurisdiction being defined by a succession of local and personal Acts passed from time to time at the instance of the Corporation of London, with a view to graft on their older tribunal the improvements in procedure, &c., established throughout the country by the General County Courts Acts, in lieu of permitting the general provisions of the County Courts Acts to avail within the "City." That the result of all this is, with regard to the recovery of debts, &c., under £50 within the "City," has been to create great confusion and injustice, is only what was to be expected.

By ancient custom of the City of London there is a Court of Hustings and a Court belonging to each of the Sheriffs' *Compter*, with a peculiar civil jurisdiction; but this jurisdiction is, by virtue of the recent local statutes which have been already referred to, now in abeyance. The Lord Mayor of London is by ancient custom said to have a peculiar civil jurisdiction over disputes between citizen and citizen, sitting as a Court of Conscience. The Court of Aldermen have a jurisdiction over disputes between broker and principal, and also an ancient jurisdiction over questions affecting the estates of citizens' orphans; but this jurisdiction is now in a great degree gone into disuse.

These ancient Courts of the City of London are very fully described in the reports, &c., of the Royal Commissioners appointed, in 1853, to inquire into the constitution, &c., of the Corporation of London, and the Select Committee of the House of Commons in 1861, on "the Government and Taxation of the Metropolis;" and to those reports, and the printed minutes of evidence in the Appendix, the reader is referred for more detailed information on the subject.*

* Report of H.M.'s Commissioners appointed to inquire into the Constitution of the Corporation of London, &c., 1853, Minutes of Evidence, pp. 181—192; and Report of the Committee of the House of Commons on the Government and Taxation of the Metropolis, Minutes of Evidence, pp. 170—179. The Courts of the City of London are also described in the author's work on the Laws and Customs of the City of London, ch. xiii.

There were formerly other local Courts in the metropolis outside the privileged boundary of the "City:" the various Courts of Request, and the celebrated *Palace Court*, with a jurisdiction in some respects resembling the Lord Mayor's Court, and, like that Court, under its original constitution, having only a limited number of privileged counsel and attorneys. The old Courts of Request were swept away by the County Courts Acts. The Palace Court survived, and owed its subsequent downfall to the accident of an energetic writer for the public press having been sued there, and in consequence brought about a clamour for its abatement as a nuisance. There remain, therefore, only among the inferior Courts of civil jurisdiction within the metropolis whose powers conflict with the County Courts, the Courts of the "City," already referred to, and a Court connected with the "City," in Southwark, called the "Borough Court of Record." *

The criminal jurisdiction within the metropolis is divided among a number of Courts. Of these, the Central Criminal Court deserves the first mention. Its jurisdiction extends to all places within ten miles of St. Paul's, including not only London and Middlesex, but parts of Hertfordshire, Kent, Essex, and Surrey, and is usually held once a month, its sittings extending to six or seven days. In its origin this Court was but the Court of Oyer and Terminer for the City of London, and of the delivery of the gaol of Newgate of prisoners taken there by the civic authorities. Parliament was induced in 1834 to give this Court the very extensive jurisdiction it now enjoys; and the judicial staff is a very efficient one, consisting of two of the Judges of Westminster Hall, the Recorder and Common Serjeant of London, and the Judge of the City Sheriffs' Court; but the Lord Mayor and Aldermen of the City are part of the legal constitution of the Court, and though these gentlemen rarely take any part in the actual proceedings

* This Court has very little business. It is held before an officer of the Corporation of London, called the Steward of Southwark.

at the trials, delay and inconvenience is sometimes occasioned by their non-attendance, as their presence is generally essential to form a Court.

Though the metropolis has thus the advantage of a Central Criminal Court, yet the jurisdiction of this tribunal is divided with the various Courts of Assize and Quarter Sessions for those counties, and for the Cities of London and Westminster, Borough of Southwark, and Tower of London. It is true some of these Courts are fallen into desuetude, but the Surrey and Middlesex Sessions take a host of cases which could with much more advantage to the public be taken at the Central Criminal Court. Under the present arrangements there is occasionally an advantage on the part of a lucky thief in getting off in the scramble, by the engagement of the police in another Court; but to all others concerned—the jury, witnesses, and professional men—the inconvenience of having several Courts sitting in different places for the same purpose is an unmitigated evil.

As already observed, there are in the metropolis eleven Police Courts, and by virtue of the Summary Jurisdiction Acts these Courts possess a very important jurisdiction. The presiding officers are Magistrates, whose qualification is prescribed by the Legislature. Such Courts were first established in the metropolis seventy years ago by Mr. Pitt, as a remedy for the evils formerly practised by Justices of the Peace in London. The Metropolitan Police Courts, as they are now constituted, were established by the Act 3 & 4 Vict., c. 84, which authorises the appointment of twenty-seven Police Magistrates,* but omits the “City,” and within this excepted portion of the metropolis, the powers and duties of Police Magistrates still belong to the Aldermen.

* At present only twenty-three Police Magistrates have been appointed for the Metropolis. The Act extends only to the *Metropolitan Police District*, and the “City” is not within this. The abolition of a separate system of police and Police Magistrates within the “City” has been repeatedly recommended to Parliament; but the Corporation hitherto have had influence enough to defeat this very desirable reformation.

The other business belonging to the office of honorary Magistrates, but which does not come within the jurisdiction of the Police Courts, is transacted throughout the metropolis in Petty Sessions, according to the districts in which it occurs, by the various Justices of the Peace for the "City," and the counties of Middlesex, Surrey, Kent, or Essex.

In London, of all places in the world, waste of time is the waste which is most felt. In the multiplicity of our present metropolitan tribunals, and the want of system in the order and distribution of the business we have at present, notwithstanding the ample supply of Judges, Magistrates, and Jurymen of every class, delays and consequent expenses in the procedure both of civil and criminal cases which might be easily saved, to the advantage of all concerned.

In the first place, why should there not be one *Nisi Prius* Court for the whole metropolitan area, to which could be sent the records from all the Courts entered for trial in London? If this Court were sitting continuously, with the interval only of the Long Vacation, and a proper arrangement were made of the causes entered, so as to ensure a proper order of trial, it would require but two of the Judges at the utmost to dispose of the whole *Nisi Prius* business—and, indeed, for a greater portion of the time, the services of one Judge would be sufficient.

At the time of entering any cause for trial at this Metropolitan *Nisi Prius* Court, a certificate might be required so as to guide the officer in arranging the list: and separate lists might be most advantageously made of the causes so entered, 1st, Cases certified to be short and undefended. 2ndly, Cases agreed to be tried by the Judge without a Jury, or when the facts were undisputed. 3rdly, Revenue Cases. 4thly, Mercantile Cases to be tried by a jury of merchants. 5thly, ordinary Common Jury cases. 6thly, Special Jury cases. 7thly, such cases as were not certified to be *London* cases. By postponing the last class of cases till after those properly belonging to the metropolis were disposed of, a very great abuse

of the present system of *Nisi Prius* trials in London would be got rid of, and the other suggestions as to the classification of the cases would, with the aid of some amendments in the Jury regulations, cause a very great improvement in our *Nisi Prius* trials, which at present are often a mere scramble, and as unsatisfactory as they are costly. These improvements could be more effectually carried out by causes being always entered and notice of trial given for ten days after the date of such notice, whenever that might expire.

In like manner, with regard to the Criminal and Quarter Sessions Courts within the metropolitan area, the substitution of one Court could be most advantageously made. If, in lieu of the monthly Sessions of the Central Criminal Court and the sittings of the various Metropolitan Sessions, there were one continuous Metropolitan Sessions always sitting (with the interval of a short vacation) and the business of the Court so arranged as to take the cases in a certain order, according to their character and importance, the whole Criminal and Sessions business of the metropolis would be disposed of with the greatest facility, and with the greatest advantage to the community. The Judges from Westminster Hall need not be required to attend more frequently than they do at present; the staff of other Metropolitan Judges, including the Recorder, Common Serjeant, Judges of the Middlesex Sessions, &c., would suffice to dispose of the whole Sessions business of the metropolis in respect of the trials of criminals and the hearing of appeals; and there are the Metropolitan Police Magistrates, whose names could be placed in the Commission with more advantage to the public than those of the Aldermen of the "City," who very properly at present are allowed to take no part in the business of criminal trials, though obliged to attend in their places.

One of the most important consequences of such a consolidation of our Metropolitan Tribunals would be the relief of those who have to serve on Juries. The present regulations affecting Jurymen in the metropolis are most unsatisfactory. Among the

360,000 householders in the metropolis, we have such a staff of qualified Jurymen of every grade as would, under a proper system of regulations, render it unnecessary for any individual to serve for more than one week every five years, and at the same time give a most complete supply for all the requisites of justice. Why could not the names returned as Jurymen within the metropolitan area be classified into lists,—1st, of Common Jurymen; 2nd, of Merchants; 3rd of Special Jurymen; 4th, of Grand Jurymen; such lists to be annually revised by the Revising Barristers, and no name to be entered on more than one list. By such a regulation, we should always have a constant supply of every class of Jurymen, without imposing on them any of the hardships so loudly complained of. At the present time, a tradesman in Oxford Street, with a counting-house in the "City," and a country residence at Clapham, may be called on to serve in half a dozen different places, in one case as a Common Jurymen, and in others as a Special Jurymen or Grand Jurymen. Were the demands on the time of Jurymen so reduced, the regulations for enforcing their attendance might be made more stringent, and the public time would not so often be wasted, and the expenses of litigation enhanced by causes going off *pro defectu Juratorum*.

With regard to the Grand Jury within the metropolis, it has long been an expressed opinion on the part of all persons competent to judge, that in cases already investigated by qualified Police Magistrates,* their interference is worse than useless. Hardly any change in the procedure of our criminal courts would be more conducive to order in the trials than such a dispensation with the services of the Grand Jury. The cases could thus be always reduced into lists, and taken in their order, to the great convenience and advantage of every one concerned, and the furtherance of the course of justice. The

* On the last discussion on this subject in Parliament, the principal objection to the dispensation of the services of the Grand Jury, in cases sent for trial by the Metropolitan Magistrates, was, that some of those cases were sent by the City Aldermen.

gentlemen who form the Grand Juries of the metropolis, relieved from such useless labour, might be well employed in inquiring into the numberless abuses which are always growing up in a great city, and by preventing such abuses, and seeing the law enforced, they would be really aiding, instead of obstructing the cause of justice. If this labour in every district of the metropolis were entrusted to a certain number of persons on the Grand Jury list, many of those evils which we have so much to deplore, would soon be got rid of. Not only might the Grand Jury be usefully employed in presenting as nuisances the abodes of crime and the dens of infamy which are so numerous in the metropolis, but in seeing that the law was generally enforced, and that the police and other public officers did their duty.

Such functions of those who now act as Grand Jurymen, with the functions also now possessed by the honorary justices with regard to the expenditure of the county rates within the metropolitan area, and the management of the metropolitan prisons and lunatic asylums, would be far more appropriate and beneficial to the public, than any duties now performed in the Grand Jury room, or at Petty Sessions, or at Quarter Sessions, or by the City Aldermen, as Criminal Judges, or Police Magistrates.

ART. IV.—THE MARRIAGE LAWS OF THE UNITED KINGDOM.

The Report of the Special Committee of the Society for Promoting the Amendment of the Law, read and received at a General Meeting of the Society, held on Monday, 19th Jan., 1863.

AT a meeting of this society, held on the 29th of January, 1862, an address was delivered by Mr. Hastings, on the "Marriage Laws of the United Kingdom." At the conclusion of the discussion on that address, a committee was appointed to consider the subject to which it related. The committee have now to report as follows:—

The contract of marriage which, except in the interchange of mutual consent, differs widely from every other contract, is at the present day governed by separate rules and attended by dissimilar results in England, Ireland, and Scotland.

Your committee have sought to investigate the nature of this difference and the sources from which it has arisen.

The conclusions at which they have arrived, in reference to the Marriage Laws of the three countries, are as follows:—

1. In considering the English Marriage Law, your committee have decided to distinguish carefully between the conditions which were necessary in order to make the contract binding on the parties themselves, and those which were required in order that the civil consequences of marriage might follow. The test to be applied in the one case is—Would either party be indictable for bigamy on his or her marrying again during the lifetime of the other? The tests to be applied in the other case are—Is the woman entitled to dower on the death of the man? Are the issue legitimate and capable of inheriting as such? and so forth. At the present day a marriage which is good for one purpose is equally good for the

other; but up to the year 1753 the two kinds of tests were not necessarily satisfied together.

The clandestine consensual marriages which the Act of George II. did away with, whatever might have been their operation on the parties themselves, appear to your committee to have laboured under the following disadvantages:—

1. They did not confer any right of dower on the wife, for dower was originally a matter of contract rather than a common law right, and could only arise when assigned at the church door, or, in other words, when the celebration of the marriage was *in facie ecclesiæ*.

2. They conferred no rights on the husband in the property of his wife, and so far resembled the later marriage of the Romans, viz., the *Usus*, with trinoctial absence.

3. The issue of such marriages was not legitimate.

4. They imposed on the woman none of the incapacities of coverture, so that the parties might enfeoff one another, and the woman retain her capacity of making a will. These propositions have never been disputed, even by those who have insisted most strongly on the validity of the contract *as a marriage between the parties*, and they are confirmed by a great variety of authorities. The mere contract *per verba de præsentì* was unattended by a single incident connected with the rights of property or the capacity to inherit.

The inconvenience of a law which allowed marriage to be good for one purpose, and bad for another, is too obvious for comment. It admitted a sort of intermediate status closely resembling the morganatic marriages of the European continent. The man and woman were recognised as husband and wife, but the legal rights or disabilities which belong to the married state were wanting.

The changes which the Act of the 26 Geo. II., c. 33, introduced into the marriage law of England were as beneficial as they were extensive. It took away from the ecclesiastical courts the power of enforcing contracts of marriage, and re-

quired all marriages to be solemnized in the church in the presence of two witnesses, besides the minister. It secured the deliberation of the parties by interposing a period of three "holidays" between the first notice to the minister and the celebration of the marriage. To these desirable ingredients it added two more borrowed from the provisions of the canon law, viz. :—

1. *Publicity*, by requiring three publications of banns "in an audible manner in the parish church."

2. *An accessible record*, by registration in a book, "to be deemed parish property, and to be carefully kept and preserved for the public use."

Persons who desired to avoid the publishing of banns, were allowed as before to obtain a licence from the archbishop or ordinary, and all marriages solemnized otherwise than after banns or licence were declared to be null and void. But a great desideratum in the law of marriage still remained to be supplied. Except during the short period of the administration of Cromwell, no provisions whatever had been made for securing the civil consequences of marriage without invoking the aid of a minister of the Established Church. The privilege of entering on the estate of matrimony, otherwise than through the door of the Church of England, was accorded to the non-conforming section of the community in 1836, by the 6 & 7 Will. IV., c. 85, which left the parties at liberty either to contract in the registrar's office, in the presence of the registrar, after a public notice of not less than three weeks, or to be married according to the rites of their particular sect, after a similar notice to the registrar, "in a properly registered building." In both cases ample provision is made for securing publicity of the marriage at the time of celebration, and also an accessible record of the fact for future reference.

With these various salutary changes in view, it appears to your committee that, so far as the great bulk of the people is concerned, little or nothing is required in the way of amend-

ment in the English Marriage Law. But the Marriage Acts of 1753 and 1823 are not applicable to the entire community. Two important classes—the Jews and the Quakers—are expressly excluded from their operation, and, indeed, it is not absolutely certain whether previously to the 6 & 7 Will. IV., c. 85, marriages celebrated according to Jewish or Quaker usage had any legal validity. The question is, however, set at rest for the future by the express words of the Marriage Act of 1836, which renders such marriages valid if contracted *according to usage*, provided that both parties be Jews or both parties Quakers, and that notice to the registrar shall have been given, and the registrar's certificate duly obtained.

The only doubt, therefore, that can possibly exist in reference to these marriages, will arise from the necessity of complying with *established usage*. If the proper forms and rites be not observed, the same difficulty may again present itself which Sir W. Scott had to deal with in the case of *Lindo v. Belisario*, where it was held, after elaborate reference to the Jewish authorities and rabbis, that the ceremony performed did not amount to an actual marriage. The simplicity of the Quaker ceremony would probably obviate any such ambiguity in their case; but it is obvious that to make any marriage depend on the nice observance of a religious form, is not only contrary to all principle, but injurious and even unjust in practice. Where the parties are acting *bonâ fide*, and intend to enter into the marriage contract, the civil effect should not be denied to their acts because an obscure traditional ceremony had not been complied with.

Your committee have already stated that, by the second section of the Act of 1836, the marriages of Quakers and Jews were declared legal. By the 6 & 7 Will. IV., c. 86, s. 31, provision was also made for their registration; but the registering officer, whether present or not at the marriage, is required to satisfy himself that the marriage proceedings have been in conformity with the respective usages of the two com-

munities. Why should special knowledge be expected of the registrar on the subject of the Quaker and the Jewish ritual; or how can he, even if present, know anything of the practice of a society to which he does not belong? If, on the other hand, he is unable to "satisfy himself" on the point of conformity, why is the marriage to go unregistered, and the issue to lose the benefit of a lasting record of their legitimacy? The source of the mischief lies in the circumstance, that the State recognises one person as alone competent to *celebrate* the marriage, and another as alone competent to *register* it. The purely civil functionary, whose duty is to record the fact, ought not to be required to judge of the completeness of a ceremonial which, *ex hypothesi*, transcends the sphere of ordinary contract. Where the marriage is celebrated according to the rites of the Established Church, the officiating minister is also the person who registers the marriage. In the case of the great body of Nonconformists, the registering officer is himself the celebrant. These two functions can never be dissociated without producing the mischievous consequence of a conflict of jurisdictions. In the single instance of Jews and Quakers this severance is permitted to take place; and though the practical inconveniences which result are not flagrant, there is no reason why the anomaly should not be banished from the English marriage law. In the case of the established clergy, the minister is, for the purposes of registration, an officer of the State, and no other civil functionary need intervene; in all other cases, the civil and the religious forms should be kept perfectly distinct, the State first securing the contract, and fencing it round with all necessary precautions, and then withdrawing to allow the married parties to superadd any such religious ceremony as approves itself to their consciences.

Apart, then, from the two exceptional cases which we have just noticed, the claims of the marriage law of England to become the standard marriage law of the United Kingdom, appear to rest on the following considerations:—

1. The marriage law of England recognises only one kind of marriage, which cannot be annulled at the mere will of the parties, and is attended by ulterior civil consequences.

2. By the publication of banns, the law secures time for reflection before entering into the marriage state, by interposing a period of three weeks between the revocable agreement to marry and the final indissoluble contract. This second consideration does not, however, apply to marriages celebrated by licence.

3. It requires the marriage to be public, both for the sake of greater solemnity, and in order that, if any impediment exist, it may be disclosed.

4. Where the marriage is contracted *bonâ fide*, it allows no latent impediment, which is not founded on nature and common reason, to invalidate the contract.

5. So long as one of the prescribed modes of celebration is followed, it holds the marriage to be binding without reference to the religious faith of the contracting parties.

Your committee, with this standard of a good marriage law in view, now pass to the consideration of the marriage law of Ireland.

It should not be forgotten that from the year 1172 (the date of the assimilating ordinance of the Council of Cashel) down to the accession of William III., the marriage law of Ireland was identical with that of England; and that whereas the mischiefs which formerly beset the marriage law of England were owing to the non-interference and neglect of the Legislature, those that now beset the marriage law of Ireland are due to express statutory enactments. Ireland does not, like Scotland, claim validity for any mode of contracting marriages which is not equally recognised here. She does not, for instance, sanction the mere consensual contract simply because it is binding *in foro conscientiæ*. Previous contracts *de præsentî*, not followed by consummation, were declared insufficient to set aside a regular marriage so early as the year 1725; and

both contracts *de presenti*, and those *de futuro copula subsequente*, ceased to form a basis for compelling ecclesiastical celebration in the year 1818, sixty-five years after the passing of Lord Hardwicke's Act. Marriages of minors are no longer invalid for want of consent of parents or guardians; the Act of 9 Geo. II., c. 11 (Irish), which made the consent essential in certain cases and under certain restrictions, having been repealed in the year 1844, by the 7 & 8 Vic., c. 80, sec. 50; commonly known as the Irish Marriage Act. Protestants of the Established Church, Jews, and Quakers, are married as in England; and the office of the registrar may, as here, be resorted to wherever it is desired to dispense with religious solemnities.

In what, then, does the variance between the laws of the two countries consist? In one word, in the series of disabling statutes which have been passed since the accession of the House of Orange. The list commences with the 9 Will. III., which not only prohibited the intermarriage of Catholic and Protestant, but rendered the celebrating priest liable to perpetual banishment. The 12 Geo. I., c. 3 (Irish), went further still, and raised the offence of celebrating such mixed marriages to the rank of a capital felony. But however terrible the penalties imposed on the celebrant, the marriage of the parties themselves had been hitherto left intact, and their issue was not bastardised. The 19 Geo. II., c. 13 (confirmed by the 32 Geo. III., c. 21), made void all marriages celebrated by popish priests where one or both of the parties professed the Protestant faith. This Act still remains in force, though many of the penalties enforced on the Roman Catholic clergy have since been swept away, and the Act of 1844 renders all celebrants of marriages not legalised thereby liable to an indictment for felony.

In a spirit similar to that of the Act of Geo. II., the Acts which rendered valid marriages solemnized by dissenting ministers, do so only in the case where *both parties are Dis-*

senters. Thus the legal value of the contract is made to depend on a question of religious belief, a connexion which a late celebrated trial, the final issue of which is still pending, has shown to be attended with the most dangerous consequences.

Next, how does the Irish marriage law stand in regard to publicity and registration? The Act of 1844 provided for the registration of all marriages celebrated by clergymen of the Established Church of England and Ireland, or by Presbyterian ministers, or according to the rites of the Jews and Quakers. But it made no provision for the registration of Roman Catholic marriages, as if in their case no protection was needed. Yet it has been ruled that the certificate of a Roman Catholic priest is admissible as legal evidence of the fact of marriage. Then, again, the ordinary precautions observed in England for ensuring publicity are neglected in Ireland where the parties are Roman Catholics, as these marriages may be solemnized at any hour of the day or night, and the publication of banns is not essential.

Thirdly, the marriage law of Ireland bears traces of unequal concession. The privilege of issuing licences and publishing banns was granted to the Presbyterians in 1844, but it is denied to all other Nonconforming bodies. These last must apply to the registrar for a licence or certificate, and be married, as in England, either in his office or in a certified building within the district. These privileges should either be extended to all congregationalists whose organization furnishes them with the necessary machinery, or else (and this appears to be the preferable alternative) the licensing system should be abolished altogether.

It is unnecessary to pursue the evils inherent in the present Irish marriage law into minuter detail, as the whole question has been the subject of recent public comment—they may be briefly summed up as follows:—

1. *Uncertainty* in the marriages of Roman Catholics and

Protestant Dissenters, due to the difficulty of ascertaining the religious belief of the parties.

2. *Want of publicity*, by reason of the loose mode in which purely Roman Catholic marriages are permitted to be celebrated.

3. *Want of security*, owing to the imperfect provisions for registration.

These inconveniences, so numerous and so extensive, have only recently attracted the notice of the Legislature, but, within the last few years, various attempts have been made in Parliament with a view to their removal. The guarantee of registration was endeavoured to be secured by the successive Government bills of Lord Naas and Mr. Whiteside in 1859, and of Mr. Cardwell in 1860. These measures sought to establish in Ireland a registration system for births and deaths, as well as marriages, and it was in consequence of the mutilation which Mr. Cardwell's bill received at the hands of the select committee to which it was referred, that nothing has as yet been done towards effecting the desired objects. The bill introduced into the House of Lords by the late Lord Campbell, was mainly levelled at the mischief arising from the invalidity of mixed marriages celebrated by Roman Catholic priests; and it proposed in substance, to repeal the 9 Geo. II., c. 13, so far as it rendered those marriages void. It provided further, as amended in committee, for the registration of purely Roman Catholic marriages, and it required that such marriages should be celebrated between eight A.M. and two P.M., in the presence of two or more credible witnesses.

The measure introduced into the House of Commons by Sir Hugh Cairns last session was of a more comprehensive character than any of its predecessors. It adopted the main features of Lord Campbell's bill, by giving validity to inter-marriages by Roman Catholic priests, and it proposed to confer on the Methodists the privilege of issuing licences, already conceded to the Presbyterians. But it left purely

Roman Catholic marriages on the same unsatisfactory footing as before. No publication of banns, no legal hours, no necessary interval for salutary reflection were prescribed.

Quakers and Jews were not, any more than in England, to be compelled to perform the ceremony with open doors, within defined hours, or in the presence of witnesses. The measure, in fact, as has been ingeniously said, was not so much a matrimonial code for all her Majesty's Irish subjects, as a "series of concordats with the chief religious parties, tacked on to a system of complete registration."

According to the law of Scotland, marriage is either regular or irregular. To constitute a regular marriage, the following conditions must be observed:—Publication of banns according to the rules of the Church, and celebration by a clergyman of any religious persuasion,—witnesses to whom the parties are known being usually present.

Your committee find that, according to the practice of the present day, marriage is generally celebrated in the private residence of one of the parties, at any hour of the day; but the presence of a clergyman and witnesses, together with the previous proclamation of the banns, seem to be a sufficient provision for the due publicity of the contract. The system of registration adopted appears to give satisfaction. It efficiently secures a permanent and accessible record of the marriage. Although the custom of proclaiming the banns three consecutive times on the same Sabbath, in the parish church, may afford facilities like the licence system in England, for contracting hasty marriages, your committee, nevertheless, desire to express their general approval of the law as affecting regular marriages.

On the other hand, they feel compelled to deprecate the facilities which the law of Scotland affords for contracting clandestine or irregular marriages. It is worthy of observation, that irregular marriages are, in every respect, as binding and valid in Scotland, as those which are solemnized publicly

after proclamation of banns. Irregular marriages may be contracted in three ways:—1. *Per verba de presenti*; that is to say, by words declaratory of present mutual acceptance of the conjugal relationship. It appears “that a verbal acknowledgment—a declaration of marriage *per verba de presenti*, may competently be proved by parol testimony. 2. That although consummation may perhaps add, in a doubtful case, to the strength of evidence as to the true intent of the parties, it is by no means an essential: a marriage constituted *de presenti*, by mutual declarations, does not require consummation in order to become very matrimony: it does *ipso facto et ipso jure* constitute the relation of man and wife. 3. That a first marriage, although private and irregular, can in no degree be affected by a second, how regular and public soever.” (Erskine’s Institute, Book I., t. 16.)

Another mode of contracting a valid irregular marriage, is *per verba de futuro cum copula subsequente*. They are marriages consummated *conjunctione corporum*, subsequent to a previous promise to marry. Marriages of the former class are contracted finally and without condition by the very acknowledgment of the conjugal relationship; for there the *conjunctio animorum* is avowed, and that mental act of consent, according to the strict logic of the canonists, is the vinculum and essence of the contract. But a marriage contracted *per verba de futuro* is, in its inception, executory, and amounts only to a betrothal. From this promise to marry either party may resile by mutual concession; and even without such mutual discharge, either may subsequently contract a valid marriage, regular or irregular, with another; but after having exchanged the promise to marry, the effect of intercourse is to raise a legal presumption of present mutual consent, sufficient, when coupled with previous betrothal, to constitute a valid marriage.

The third class of clandestine marriages includes those where the proof of the *consensus* rests upon no express decla-

ration either *de presenti* or *de futuro*, but upon habite and repute being proved *rebus ipsis et factis*. Proof of cohabitation, and general reputation of being husband and wife, is accepted as presumptive evidence of the *consensus*, which, in contemplation of law, is very marriage.

The statute generally known as Lord Brougham's Act (19 & 20 Vict., c. 96), making it essential to the validity of an irregular marriage, that one of the parties, at least, shall have resided in Scotland twenty-one days before the event, was a step in the right direction; but your committee are strongly of opinion that a much more comprehensive and radical reform is absolutely necessary.

The uncertainty thrown around the status of parties ostensibly married, must in the future, as it has done in the past, lead to painful litigation and disastrous consequences. Surely the best interests of a community are placed in serious danger, when the law holds forth facilities for entering upon so important a contract as marriage, even without the knowledge of the parties themselves. The fact of marriage is only a legal inference from a series of antecedent circumstances, and frequently so doubtful as to require solemn judicial investigation, to ascertain its nature. There being no registration, or public ceremony, it is obvious that fraudulent representation as to status may be successfully made, and interests of the most momentous character may thereby be placed in jeopardy.

Irregular marriages are defended on two grounds: first, as being in theory strictly logical; and secondly, as being in practice conducive to morality. What is marriage, it is asked, in the sight of Heaven, but the mutual acceptance and acknowledgment of the relationship of man and wife? The fact is complete when the interchange of consent takes place, and the law is bound upon proof of that interchange of consent, howsoever and from what sources soever derived, to recognise its binding force. The publication of banns, religious rites, and

ceremonial observances, it is said, are purely adventitious, the essence and substance being the consent of the parties. It is not disputed that consent is the very essence of the matrimonial contract. Indeed, consent is the very essence of all contracts. The question really is, whether the law ought not to insist upon certain observances as indicia and legal evidence of that consent. The provisions of the Statute of Frauds, all the strict regulations as to stamps, registration of deeds, signatures, attestation, &c. &c. prove that mere evidence of consent is not always sufficient to bring genuine and *bonâ fide* agreements under the cognizance of the municipal law. The observations of Lord Stowell upon this subject are very pertinent: "Marriage in its origin is a contract of natural law; it may exist between two individuals of different sexes although no third person existed in the world, as happened in the case of the common ancestors of mankind. In civil society it becomes a civil contract, regulated and prescribed by law, and endowed with civil consequences. In most civilized countries, acting under a sense of the force of sacred obligations, it has had the sanction of religion superadded. It then becomes a religious as well as a natural and civil contract, for it is a great mistake to suppose that, because it is the one, it may not likewise be the other." (2 Hagg. Cons. Rep. 63.)

Every community has a right—nay is bound for its well-being—to impose upon individuals certain conditions and obligations. Will it be said that the courts should take judicial notice of a sale of an acre of land which is only evidenced *per verba de præsentis*? Or will it be said that a marriage settlement is of so much greater importance than the marriage itself as to require clearer proofs than that to which it is simply appurtenant?

As to the effect of clandestine marriages on morality, it is said that the dishonourable man will be deterred from practising his seductive arts by the solemn consequences which the law attaches to immorality, if preceded by promise of mar-

riage. But strangely enough it seems to be forgotten that for precisely the same reasons, the direct tendency of that law is to make female frailty the more easy victim of the designing, the dishonourable, and the immoral. It has been further urged in favour of this system, that clandestine marriages very seldom occur, the proportion being, as it has been said, about one in five hundred. But is it evident, from the very nature of these marriages, that the best calculation is little better than a good guess? To obtain any reliable estimate implies the absence of that secrecy which is their distinguishing characteristic. Those alone come to be known which litigation, family dissension, or some pressing cause, force into publicity. Again, if the proportion of irregular to regular marriages be one to five hundred—it is sound policy to throw uncertainty around the social status of the majority for the sake of extending in exceptional instances, what, for the sake of argument, might be admitted to be a merciful justice?

Lastly, this system of law has the grave fault of befriending the woman, who although wronged, has at least been accessory to her own disgrace, while it casts into irretrievable social degradation the woman whose conduct may have been throughout innocent and honourable.

The celebrated Dalrymple case may be cited as an example of the cruel results effected by this law. Miss Johanna Gordon had carried on a clandestine intercourse with Mr. Dalrymple, afterwards Lord Stair, while quartered with his regiment in Edinburgh. After exchanging pledges of love and fidelity, and almost unknown to themselves contracting what was judicially pronounced to be a legal marriage, the young cornet went abroad, and his affections towards Miss Gordon underwent a marked change. It is true, that the law bound down the unscrupulous young nobleman, and compelled him to make the best reparation to the woman he had loved, deserted, and deceived, by declaring him her husband. But Mr. Dalrymple, subsequent to the secret marriage with Miss

Gordon, won the heart and hand of Miss Julia Manners, sister to the Duchess of St. Alban's. They were publicly married: little did Miss Manners think that a deception was being practised upon her by a man who was married to another, and that the day would come when the law would break up that illusion, bastardise her children, and assign her a doubtful status in society, to be shunned if not pitied, and with little chance of ever being received into honourable wedlock. And this is not analogous to the case of bigamy, for here it was absolutely impossible for Miss Manners to have ascertained the fact of Lord Stair's previous marriage.

It has also been urged that, although the system may be in some respects bad, there are individual cases in which it is productive of unquestionable good. That admission is tantamount to giving up the argument, unless the old maxim is to be thrown aside, and the greatest good of the greatest number is no longer to be the acknowledged standard of a good law.

POSTSCRIPT—MR. CHISHOLM ANSTEY. THE CONVICT QUESTION.

WE much regret that the large encroachment on our space made by the report of the trial, *Seymour versus Butterworth*, has obliged us to postpone articles on more than one question of pressing interest. We had intended to call our readers' attention at some length to the correspondence which has taken place between Mr. Chisholm Anstey, ex-Attorney-General of Hongkong, and the Colonial Office, and to the remarkable and startling facts which it discloses. It appears that when Mr. Anstey was, in 1858, acting as Attorney-General at Hongkong, he found himself compelled by his official duty, and on information received from one of the magistrates of the colony, to prefer an indictment against a certain Daniel

Richard Caldwell, then filling the responsible post of Protector-General of Chinese in the island. The charge against Caldwell was a grave one; it was for piratical practices, and for confederating with pirates, and notably with one Machow-Wong, a worthy who is at present expiating his iniquities at Labuan, under a sentence of penal servitude. It further appears that in consequence of his taking public steps, as Attorney-General, against Caldwell, Mr. Anstey was denounced by the then Governor of Hongkong, Sir John Bowring, in the strongest terms, and was first suspended, and subsequently removed, from his office of law adviser to the Crown, and his position as Member of the Legislative Council of the colony. Happily, however, these arbitrary proceedings had not the effect which was probably anticipated and desired, that of stifling the inquiry: and an investigation having been made by the present Governor, Sir Hercules Robinson, and the Executive Council of Hongkong, it has been officially announced that the charges against Caldwell have been proved, and that he has been dismissed from the public service. It would have been imagined that the Secretary for the Colonies would have taken the earliest opportunity of expressing to Mr. Anstey the regret of Her Majesty's Government that he should have sustained so much injury and loss in return for the performance of an arduous public duty; but we are equally grieved and surprised to find that it has been only after repeated and urgent applications by Mr. Anstey for bare justice, and after a long delay, that the Duke of Newcastle has been induced to make any acknowledgment of the services that gentleman has rendered. His Grace's long continued refusal to do justice is the more extraordinary, inasmuch as it appears from Mr. Anstey's letters that he has never sought, and does not wish for, restoration to office; he asked only an official acknowledgment of his services; and a contradiction to the injurious and (as is now proved) unfounded accusations made against

him by Sir John Bowring. The tardy justice of the Colonial Office is embodied in a letter to Mr. Anstey, of November 14th, and we extract the following passage:—

“I am directed to inform you, that the Duke of Newcastle is perfectly ready to express his opinion, that the truth of the charges, of which you are the principal author, brought against Mr. Caldwell, before the Commission of Inquiry of 1858, has been substantially established by the recent investigation before the Executive Council, so far as the culpability of his connexion with Ma-chow-Wong is concerned; consequently, that it cannot now be said, in the words of the letter addressed to you by order of Governor Sir John Bowring, that ‘none of those charges have been satisfactorily proved.’ His Grace will go further, and say, that in forcing on a public inquiry into that officer’s conduct, you did, in that respect, render a material service to Her Majesty’s Government, and the colony of Hongkong.”

We have now only space to observe that as the colonial law officers of the Crown are frequently placed in circumstances of considerable difficulty, and are charged with very onerous duties, it is absolutely necessary that they should be supported in the due execution of their functions. The treatment of Mr. Anstey affords scant encouragement to them to come forward for the exposure of corruption and complicity with crime, when practised in the high places of a colony: yet it is for such purposes, we presume, that an Attorney-General holds office. We confess our wish, in the public interest, that a “material service” had been more worthily requited.

The considerable increase of crimes of violence during the autumn and winter has led to the discussion of the whole question of secondary punishment and convict discipline. The *Edinburgh, Quarterly*, and *Westminster Reviews* contain articles thereon, and the Law Amendment and Juridical Societies, and the Society of Arts, have devoted several evenings to debates on the subject, in which, as usual, a wide diversity of opinion has prevailed. There is one point, however, on which all seem to be agreed—that the convict system of England has broken down, or is at any rate a comparative

failure. The Home Office seems to acknowledge as much by appointing a Royal Commission of Inquiry,* which will commence its sittings in a few days, and will probably effect much good by collecting fresh information, and spreading through the public mind a spirit of calm investigation in the place of the passion and prejudice which have been hitherto too prevalent on the question. For ourselves, we are open to conviction from any quarter, and on any portion of the subject; but we are much mistaken if the result of the inquiry be not to establish two points:—the one, that transportation to a penal settlement, and on any large scale, is both inexpedient and impracticable; the other, that the adoption of the principles of the Irish Convict system would go far to remedy the evils at present complained of, and would place our penal administration in England on a rational and satisfactory basis.

* The names of the Commissioners are given in our "Events of the Quarter." We are sorry to observe that Lord Brougham's name does not appear in the list. His lordship, if we remember right, was chairman of a select committee of the House of Lords, which, some years since, investigated the subject very fully; and he has since that time repeatedly shown his interest in all its details.

Notices of New Books.

[* * It should be understood that the notices of new works forwarded to us for review, and which appear in this part of the Magazine, do not preclude our recurring to them at greater length, and in a more elaborate form, in a subsequent Number, when their character and importance require it.]

New Commentaries on the Laws of England. (Partly founded on Blackstone.) By Henry John Stephen, Serjeant-at-Law. Fifth Edition. Prepared for the press, by James Stephen, Esq., LL.D., Barrister-at-Law, &c. In Four Volumes. London: Butterworths. 1863.

THE fifth edition of this great work brings down its information to the present time. Mr. James Stephen is the able editor of the volumes which have permanently associated the name of his father with the history of English Law; and we doubt not that many future editions will continue to spread throughout the empire that knowledge of the principles of our jurisprudence, and our constitution, which are so well blended in the pages of these Commentaries with a mass of practical information on all the various branches of law.

The Influence of the Mosaic Code upon Subsequent Legislation. By J. B. Marsden, Solicitor. London: Hamilton & Adams; and Hatchards. 1862. pp. 303.

MR. MARSDEN seems to have been smitten with a desire to vindicate orthodoxy in a legal fashion. He maintains, apparently, that all the nations of the world have borrowed their jurisprudence from the Israelites, and has expended a good deal of time and labour in bringing together proofs of the identity of some of the principles or enactments of the Jewish Code with the laws of other countries, under the impression that he thus proves his thesis. We can assure Mr. Marsden that we thoroughly estimate the excellence of his purpose and the perseverance of his industry; but we cannot compliment him on having gone beneath the surface of the question, which requires far more learning, and far more intimacy with modern Biblical criticism, than he has any claim to possess.

Letters on Transportation and the Game Laws. By William Howitt. London: A. W. Bennett. 1863.

WE cannot pretend to praise the contents of this pamphlet. It seems to us to have been written with inadequate knowledge and

inordinate self-opinion. The game laws may be very bad, and transportation may be very good; but they will neither be written up, nor written down, by such compositions as this.

The Highway Act, 1862. With an Introduction. By H. A. Owston, Solicitor. London: Hamilton & Adams; Leicester: Crossley & Clarke. 1862. pp. 86.

MR. OWSTON'S little book is intended for the general public; it contains a description of the law up to the passing of the new Highway Act; an account of the reasons for the adoption of that measure; a statement of its principal provisions, its object and uses; the Act itself *in extenso*; and, finally, several appendices, containing useful information. We can say, for ourselves, that we have derived considerable advantage from Mr. Owston's labours.

The Bleach and Dyeworks Acts, with Notes, Forms, &c. By Henry C. Oats, Esq., Barrister-at-Law. Second Edition. V. & R. Stevens, Sons & Haynes. 1863. pp. 60.

THE "Bleach and Dyework Acts," by Mr. Oats, is a Second Edition, incorporating the Bleachworks Act of 1862, which came into force on the 1st of January last. It seems to contain the requisite notes and information.

A Practical Treatise on the Law relating to Mines and Mining Companies. By Whitton Arundell, Attorney-at-Law. London: Lockwood. 1862. pp. 226.

So far as we are able to judge by a cursory perusal, which is all that we have been able to give to the *whole* of Mr. Arundell's book, we are of opinion that he has succeeded in his task. The chapter on the rights of water and way, which we have examined with more particularity, has given us satisfaction. We apprehend that both lawyers and laymen may consult the book with advantage.

Analysis of American Law, presented in a Chart, with Explanatory Comments. By Joseph W. Moulton, Counsellor-at-Law. New York: John S. Voorhies. 1859.

THE title of this book explains its nature. It is an attempt to present the principles and leading features of American law in the form of a small chart, under the heads of Foundation, Superstructure, and Subdivisions. There are also sixty-eight pages of explanatory comments.

The Legal Examiner. Edited by Charles Henry Anderson, Solicitor. No. II. Hilary Term, 1863. V. & R. Stevens, Sons, & Haynes.

THIS little periodical deals with the education of solicitors, and is evidently earnest in its work. The first number seems to have sold

largely; the second, which is now before us, contains schemes for the education of articulated clerks, some passages of which we subjoin, as we are always ready to help on any suggestion for the improvement of professional education.

"We propose that Law Classes should be established in London, and that it should be compulsory upon every Articled Clerk to attend them for the period of his Articles subsequent to the Intermediate Examination, for the purpose of being instructed in a regular course of legal knowledge. The pupil would there be told what to read, and by the aid of the careful explanation and assistance of the tutor, would have a chance of understanding what he had read."

"The classes should be under the supervision of young solicitors, who, having themselves passed with distinction, would, as in the case of tutors at the universities, be the men of all others most fitted for the post. Nor should these tutorships be mere empty titles. The payment by each pupil of a small sum per annum for his instruction would insure a very large income, which would be available for the salaries of the tutors, the creation of studentships, and other incidental expenses. In order effectually to raise the standard of legal knowledge, and at the same time to insure competent men for tutors, it will be necessary that the present final examination should have two divisions; one a simple pass examination, and the other for honours; the latter embracing not only the subjects of the former, but also additional ones, at the same time being with reference to the questions of a more searching nature; the time occupied would also be extended, and each candidate should in addition undergo a *viva voce* examination. The result of this 'honour' examination should be made known by a division of the successful competitors into classes in order of merit, and honorary distinctions would be conferred in proportion to the merit thus displayed, the first in merit of each term receiving a studentship tenable for three years, those below him prizes and certificates. It is from the ranks of these 'honour men' we would select the tutors. We also may observe that a portion of the *pass* examination should also be *viva voce*, and the total number of marks obtained by each successful candidate should be published, as is done in the case of examinations for the civil and other services."

"The Incorporated Law Society now has the control of professional education, and to them therefore application must first be made to assist in the development of this scheme. We have every reason to believe that this application would not be made in vain; should, however, the result be otherwise, it will then only remain for the profession at large, independently of the society, to take the matter in hand."

The Student's Guide to the University of Cambridge. Cambridge: Deighton, Bell & Co. 1863.

THIS is a severely practical little book, almost every page of which contains authoritative and useful information relating to the Uni-

versity of Cambridge. The precise difficulties which perplex the freshman and expose him either to the generous condescension of his seniors or drive him with hesitating steps to consult his great oracle, the college tutor, are here anticipated and explained with excellent discrimination by men of well-tried experience. The internal economy of the colleges, the disbursements to be made throughout the curriculum, the conditions upon which scholarships, fellowships, &c., may be obtained, the qualifications which candidates for college emoluments and honours must possess, the subjects assigned for the various examinations in divinity, arts, law, medicine,—in fact, the whole information required by the undergraduate for the settlement of his plans—is given in a simple business-like manner. The book holds forth no higher pretension than that of being a reliable and intelligible guide. It consists of a series of twelve articles, contributed by different authors, each being responsible for his own. The high standing and personal experience of the contributors are quite sufficient to merit implicit confidence and respectful consideration. They write with the practical knowledge of men who have conducted the examinations which they describe and advise upon, and who have, either as students or private tutors, become familiar with the art of winning college distinction. Thus the Rev. W. M. Campion, B.D., Fellow and Tutor of Queen's College, describes the course of reading for the Mathematical Tripos. The Rev. H. Latham, M.A., Fellow and Tutor of Trinity Hall, contributes a most useful article on University Expenses; and J. K. Seely, Esq., M.A., on the Choice of a College. But we insert this notice of the *Guide to Cambridge in the Law Magazine* chiefly because of the paper on Law Studies and Law Degrees written by J. T. Abdy, LL.D., Regius Professor of Laws. The undergraduate who may have intention to proceed after taking his degree in arts or in law, to the Third University, would do well at the very onset to consult that chapter. It is marked by sound wisdom and excellent counsel. The comments on the Inns of Court examinations are just and impartial. We have no fault to find with the course of reading sketched out and recommended to the ambitious and high-minded student. The University of Cambridge offers not only opportunities, but valuable inducements, to prosecute the study of the law; and those who turn this to account must pass through an excellent preparation for the higher and wider rivalry of the Inns of Court. The learned professor is probably guilty of no exaggeration when he states, that "with reference to the Inns of Court examinations, both for admission to the bar and for the studentships, it is not asserting too much to say that the university student who follows out the plan of reading above sketched, and who obtains a place in the first class, ought, with the help of the lectures of the readers in London, and the technical knowledge acquired by one or two years' attendance at chambers, to look forward with certainty to a studentship in the Inns of Court."

Supplement to a Treatise on the Law of Merchant Shipping. By David Maclachlan, M.A., Barrister-at-Law. London: William Maxwell. 1862. Pp. 80.

THIS small volume forms a supplement to the well-known and highly valuable Treatise on the Law of Merchant Shipping by Mr. Maclachlan. It consists of the Merchant Shipping Act Amendment Act 1862, and the Admiralty Court 1861, edited with Notes, and with the principal cases decided in Maritime Law since October 1860. The notes are not mere jottings on the various sections, but are exponent of the principles of the enactments. We may refer, by way of example, to the valuable observations at pp. 55, 56, on the jurisdiction of the Court of Admiralty, and to the following note on the 4th section of the Admiralty Court Act, giving jurisdiction over claims for building, equipping, or repairing of ships:—

“This is the first section extending the jurisdiction; does it also confer a lien? To none more naturally and justly might this species of security be given if that had been the intention, since it is by their money that the ship exists as she is; and, indeed, at common law, for building and for repairs there is a lien. But in the supposition that the statute confers a maritime lien, the restriction on these persons against arresting the ship for themselves is quite unintelligible; whereas, assuming that a new right of action in *rem* without a maritime lien is conferred, it is extremely natural that these parties should be restricted to their common law rights and remedies until the proceeding which is adopted by others against the *res* places their money in jeopardy. Even this limited right is lost by the transfer of the vessel to a *bonâ fide* purchaser. This would not have been so if there had been a maritime lien which follows the *res* notwithstanding a sale, unless it be a sale by order of the Court. In this appears the importance of the view suggested by the statute, that it introduces a new right of action in *rem*, without conferring a lien where it did not exist before.”

Chemistry. By William Thomas Brande, D.C.L., F.R.S.L. & E., &c., and Alfred Swaine Taylor, M.D., F.R.S., &c. London: John W. Davies. 1863. pp. 892.

WE should be stepping out of our province, and assuming a knowledge to which we can lay no claim, if we ventured to review this volume on its scientific merits. For these we are willing to accept the names of the distinguished editors as a guarantee for the efficiency of the work. But looking at it from the lawyer's point of view, we can state what, upon a careful examination, seems to us to be its recommendation to the profession. It contains clearly written definitions and explanations, valuable to the amateur in science: in its pages are collected a great number of facts, historical and other, bearing on the subject, and brought down to the latest date, as (for one instance out of hundreds) the new process for manufacturing

malleable platinum, by Deville, and illustrated in the International Exhibition. The section on this metal (pp. 615—621) is a good specimen of the excellence of the book. There is much information useful to those who have to deal with poison cases, and others of a like nature; and a careful index saves the trouble of search.

Every Man's Own Lawyer. A Handy Book of the Principles of Law and Equity. By a Barrister. London: Lockwood & Co. 1863. pp. 336.

THE barrister who compiled this volume should have put his name on the title-page, that he might enjoy the gratitude due to him from the profession of the law. Should his book sell extensively and be frequently acted on, we would venture to predict a considerable increase to the business of litigation. It is not badly compiled; and though the information given is not always strictly accurate, it is perhaps nearly as much so as can be expected in a work which professes to squeeze the law of England into a little more than 300 small pages. But it is idle to suppose that any layman really in want of safe legal information would obtain it in this book. In ordinary life, a little common sense will supply the place of a great deal of law; but if law is wanted, the public had better go at once for the genuine article than take it in this "patent medicine" sort of form. To the profession itself the work could be of no value.

An Essay on Waste, Nuisance, and Trespass; chiefly with reference to Remedies in Equity; treating of the Laws of Timber, Mines, Lights, Water Support, the Construction of Public Works, &c. &c. By George V. Yool, M.A., of Lincoln's Inn, Barrister-at-Law, late Fellow of Trinity College, Cambridge. London: W. Maxwell. 1863.

ONE of the most venerable branches of the great common law of England (whereof so much has been learnedly written by Lord Coke in the *Institutes*) is that which relates to offences against realty. Waste, nuisances, and trespass, are coeval with property in lands, and either by custom or statute, their legal characters have for many centuries been well ascertained. The legal and equitable remedies which they called forth are scarcely less ancient. But although the great principles of this department of real property law owe their origin to the learning and wisdom of remote times, they have received a novel application in our own age. "Waste of the forest," "waste of estangues," "waste of vivary," "waste of a weare," are more or less unfamiliar terms to a modern English lawyer; whereas there is a present interest in such questions as, how far a tenant for life impeachable of waste has a right to continue the working of mines? whether he may sink new shafts for the purpose of following up a vein of coal? whether a tenant for life has a right to open pits or mines which have been abandoned? whether a new vein or bed may be worked

by means of an old shaft? what the rights of a dowress may be in mines opened after her husband's death? how far the owner of the soil may, by injunction, prevent his property being broken up to insert gas-pipes, telegraph wires, &c. &c.? when trespass will lie against companies who have obtained parliamentary powers to construct canals, railways, &c. &c.? Mr. Yool, in his *Essay on Waste, Nuisance, and Trespass*, has collected, and commented upon the judicial decisions and recent statutes which exhibit the application of the ancient maxims and doctrines of the common law to the new wants and circumstances of civilised times. It is no disparagement to add that originality was possible only in the exposition of the more recent decisions and later statutes. The old treatises had sufficiently expounded the old law; but, in addition to a very clear and strictly accurate account of what may not perhaps be to the reader altogether new, he will find valuable additions to the ancient learning in the modern cases which have been judiciously selected and intelligently construed.

It should also be stated that the volume has been compiled chiefly to explain the equitable reliefs and remedies which may be obtained in the Court of Chancery and Common Law, in reference to these correlate offences. Considering the progress which has recently been made in the assimilation of the powers and procedure of the Courts of Law and Equity, it is to be regretted that the author has not embodied in his treatise to a sufficient degree the practice of the former in regard to injunctions and other equitable powers recently conferred upon them, and which they not unfrequently exercise in cases of waste, trespass, and nuisance. This work will probably pass through the present edition rapidly; and the next, we trust, will be supplemented with an account of the operation of the new statutory common law powers conferred on the Court of Chancery, as far as pertinent to the subjects treated of in this book, and also of the equitable powers exercised in reference to the same in Westminster Hall.

The Merchant Shipping Amendment Act, 1862. With an Introductory Analysis, an Appendix, &c. By James O'Dowd, Esq., of the Middle Temple, Barrister-at-Law and Assistant-Solicitor for the Merchant Shipping Department of Her Majesty's Customs. London: Butterworths. 1863.

For a country of such great commercial intercourse as England, good text-books on the laws of Merchant Shipping are of the first importance. Mr. O'Dowd, who had a hand in the making of the Act of 1862, has now undertaken to edit it. As the result, we have here an interesting and elaborate book. The Act conferred increased jurisdiction in salvage cases upon the County Courts, Quarter and Petty Sessions; and in order to make his book more useful to practitioners in these Courts, Mr. O'Dowd has appended a digest of the most important salvage decisions. A better book, of its kind, we have

not seen for some time. The author has spared no trouble to make it complete, by an elaborate analysis, an appendix of cases and forms, and also by that requisite of all books—a very fair index. Not only ought it to be in the library of the lawyer, but also in the hands of county and borough magistrates, and men of business. The title-page is too modest to convey a notion of the scope of the book. The Analysis is, in truth, an accurate treatise on the law of Merchant Shipping. From it (p. 69), we extract the following, on the interesting subject of derelict at sea, as a fair example of Mr. O'Dowd's perspicuous writing:—

“The title which is acquired to property by finding is a species of occupation; and it is laid down as a rule of law by the civilians that the mere discovery or sight of the thing is not sufficient to vest in the finder a right of property in the thing found (Pothier, ‘*Traité de la Propriété*’). His title is acquired by possession, and this must be an actual possession. He cannot take and keep possession by an act of the will *oculis et affectu*, as he may when the property is transferred by contract, and the possession given by symbolical delivery. To consummate his title, there must be a corporal prehension of the thing. Though it is said, it is established by custom, and that such was the ancient law of the Romans, when two are near together or in company where the thing is found, that the title is acquired in common (Pothier, ‘*Pandects*,’ xli. 1–8; Heineccius, ‘*Recitationes in Intit.*,’ 350; ‘*Vocet ad Pandect.*’ xli. 1–9). Upon these principles, the discovery of wreck left derelict by three schooners, and the boarding of her from one of them, were sufficient to give them the right of possession (the schooner *John Wurts*, Olcott’s R. 462).”

The Testament of the Law; or, the Truth about the Devolution and Distribution of Property in Cases of Intestacy; with a Proposal for an Intestacy Act, to include Real as well as Personal Estate; being a Letter addressed to the Right Honourable John Earl Russell. By Thomas Boyfield Sikes, Solicitor. London: Arthur Hall & Co. 1862.

UNDER this somewhat quaint title, the author has presented a particularly clear and compendious statement of the leading provisions of the law of inheritance (3 & 4 Will. IV. c. 106), and of the several statutes of distribution. The pamphlet is addressed under the form of a letter to Lord Russell, with the avowed object of inducing “the great middle class of England (as the author has it) to insist on the reformation of a law which so intimately affects the domestic happiness of their families.” From a preface so impassioned, we were not prepared for an argument so temperate and well sustained. The author writes apparently under a conviction which has grown deeper and deeper with advancing years. Referring to the inefficiency and injustice of the laws now controlling the devolution and

distribution of property in cases of intestacy, he urges the necessity of their immediate revision in this strain. "Such is my anxiety to supply this deficiency, and so indignant am I at the existence of those legal anomalies which do nothing but engender quarrels and lawsuits between the different members of a family, that I cannot be content to remain any longer a silent spectator of their baneful operation." In the ardour of controversy, Mr. Sikes has once or twice missed the point, and allowed his judgment to be thrown off its balance. Hard words not unfrequently spoil even good arguments, and a writer possessing unquestionable ability with only too much fervour, would do well as soon as possible to change declamatory censure for a more discriminating and temperate antagonism. It is not in good taste to assume that the whole legal profession is banded together in a selfish and unscrupulous conspiracy to oppose wise reforms; nor is there any justification for the bold insinuation that, "when the law is simplified, when the perplexing distinctions in the succession to real and personal estate, which are the source of so much litigation are removed, men of the law know very well that a portion of their occupation is gone." The author is also in error when he confounds simple acquiescence in the present state of things, with some hidden and deeply contrived scheme on the part of lawyers to defraud the public of their rights; and it is silly extravagance of speech to add "that to be mute under such circumstances is to be *particeps criminis*—to be accomplice and abettor of those who are always conspiring against everything in the shape of legal reform." After so grandiose a preface, the only excuse for noticing the pamphlet itself is the good sense and excellent taste by which it is distinguished. Mr. Sikes has evidently bestowed upon the subject a good deal of sound practical thinking. The canons of descent have been well considered, and compared not only with the familiar genealogical chart in the text-books, but with the habits and wants of the present age. Many of the suggestions thrown out are really worthy of careful reflection. With reference to the distribution of personal estate, these are some of the changes he would recommend: "Where an intestate dies without wife and issue, and leaving a father and brothers and sisters him surviving, the same objection which was made to a father taking the whole of his intestate son's real estate equally applies to his taking the whole of his personalty, in which, I contend, the brothers and sisters ought to be allowed to participate with their father. Neither is it fair or just that an aged grandfather or grandmother should be excluded by the brothers and sisters of the intestate from participation in the personalty, when they are all in equal degree of kindred to him. . . . The right of representation among collateral kindred should not be confined to the children of brothers and sisters, but should be extended to their issue *in infinitum*, in the same manner as among the intestate's lineal descendants." It is also suggested that, in the event of there being no issue or next of kin to a deceased husband dying intestate, the widow should not only be entitled to a moiety of the personalty, but to the whole. "To give the eldest son the whole of the land,

and also an equal share of the personal estate with his younger brothers and sisters, is so monstrous an act of injustice that such a disproportion of property, I verily believe, is not sanctioned by the law of any other country in the world. . . . What I propose, therefore, is an Intestacy Act, under which the whole of the intestate's property, real and personal, should vest in an administrator, who should be authorised to convert the same into money, and divide the residue among the distributees. Power should be given to the Court of Chancery, in cases where it might be deemed advisable, to prevent the administrator from selling the whole or any portion of such property. With respect to the persons who should be the distributees, the order in which they should succeed, and the proportions of the intestate's property which they should take in every case, it would be desirable in any new enactment (with the above exceptions) to imitate the present statute of distributions." The whole argument is founded upon the proposition that property, real and personal, should by law descend, and be distributed as much as possible in that course which would have been marked out by the deceased, had he or she disposed of the same by will; and it is only just to the author that this notice should conclude with a cordial acknowledgement of the ability and cogency with which the argument is maintained.

Supplement to a Treatise on the Law of Partnership; including its Application to Joint-stock and other Companies. By Nathaniel Lindley, of the Middle Temple, Esq., Barrister-at-Law. London: William Maxwell, 32 Bell Yard, Lincoln's Inn. 1863.

Two years ago, Mr. Lindley's Treatise on the Law of Partnership was welcomed by the profession as a valuable and elaborate addition to the legal text-books of this country. Since that time, two important statutes — the Bankruptcy Act, 1861, and the Companies Act, 1862 — have been passed, and many leading decisions have been pronounced. The completeness of the original work has thus been broken up by the legislation of the last two years, and it became necessary to adapt it to the present state of the law. There were two ways in which this might have been done. A new edition of the whole work might have been issued, incorporating the new Acts and decisions throughout the two volumes, as they originally stood. This arrangement would have entailed a double expense upon the purchasers of the first edition, inasmuch as they would have been compelled to buy over again a great bulk of matter already in their possession. Mr. Lindley has wisely adopted the more economical plan of publishing a supplemental volume, containing everything that is new on the subject, indexed and arranged for reference to the original work. It will be remembered that the first treatise was divided into four parts. The first related to the *creation* and *dissolution* of partnerships. The second treated of the *rights* and *obligations* of partnerships and companies, as regards non-members. The third, of *rights* and *obligations*, as between the members themselves; and the fourth, of the *dissolution* and *winding-up* of partnerships and

companies. The present Supplement is divided into two parts. "The first part consists of notes, showing what alterations require to be made in the text, irrespectively of the Companies Act, 1862. These notes are placed in the order of the pages of the original treatise; and by turning from any page in the present Supplement, the alterations and additions which ought to be made will at once be seen. The second part is devoted exclusively to the Companies Act, 1862, and consists of four chapters, corresponding with, and intended to be supplementary to, the four books, into which the original treatise is divided." The notes throughout are written with the accuracy and clearness which were so conspicuous in the first edition. All the leading recent decisions are collected and commented upon, so that the reader will find the law as it now stands with regard to almost every question connected with partnership. The important case of *Cox v. Hickman* (5 Ho. Lo. Ca. 268) had not gone up to the House of Lords when the original work was issued. The present Supplement follows up the case to the highest Court of Appeal, and contains a clear analysis of their Lordships' judgments. Nor has the author given too much space to the consideration of that case, seeing that by it the law, as laid down in *Waugh v. Carver*, is modified in a most material respect. The House of Lords have now decided, "that whether persons who share the profits of a business incur the liabilities of partners or not depends upon whether that business is carried on by themselves personally or by others as their agents." Thus a great branch of partnership law has been substantially placed on a new footing, by making agency the true test of partnership, and not the agreement to share profits to an indefinite extent.

Studies in Roman Law, with comparative Views of the Laws of France, England, and Scotland. By Lord Mackenzie, one of the Judges of the Court of Session in Scotland. Edinburgh and London: Blackwood & Sons.

THIS is, in many respects, one of the most interesting works that the legal press has issued in our time. On perusal it will be found to be something more than its modest and yet attractive title would indicate. Although we do not value so highly as Lord Mackenzie appears to do some of the authorities cited, we regard the book as an important contribution to the learning of comparative jurisprudence. It, in fact, forms a lucid exposition of the principles and rules of law, municipal and international, which prevail in and are recognized by the countries referred to, with a historical summary of the Roman Law, by way of introduction; and the author is one of Her Majesty's Judges, actually on the Bench, and in the daily discharge of his judicial duties. Its claims to attention and authority, therefore, are of a peculiar nature, and very different from those accorded to other law books, however able and well written, while at the same time the responsibility attaching to its statements is proportionably great.

The explanation of the Roman law, historical and expository—the “Studies”—is admirably given, clear, and simple, and yet very learned, and the whole work is conceived in a candid and liberal spirit, being besides distinguished by a calmness of tone eminently befitting the judicial pen. As a literary composition it has great merits; the topics are well selected, the language good, and the style generally thoughtful and assured.

We observe in it allusions, which are highly suggestive, on some of the subjects of the day. To these, as well as to the other characteristics of the book, we hope to direct attention in a future number, stating our views with all frankness, and with all the consideration and respect which are due to the learned Lord of Session.

The following will be noticed in our next Number.

Handy-book on the Diminution of the Poor Rates. By T. G. Grady, Esq., Recorder of Gravesend. London: Wildy & Son. 1862.

An Elementary View of the Proceedings in an Action at Law. By J. W. Smith, Late of the Inner Temple, Esq., Barrister-at-Law, Author of “Leading Cases.” Eighth Edition; Adapted to the Present Practice by Samuel Prentice, Esq., Barrister-at-Law. London: W. B. Stevens, Sons, & Haynes. 1863.

The Criminal Law Consolidation and Amendment Acts of the 24th & 26th Vic. With Notes, Observations, and Forms for Summary Proceedings. By C. S. Greaves, Esq., Q.C. Second Edition. London: V. & R. Stevens, Sons, & Haynes; H. Sweet; and W. Maxwell. 1863.

The Shipping Law Manual; a concise Treatise on the Law governing the Interests of Shipowners, Merchants, Masters, Seamen, and other Persons connected with British Ships, together with the Acts of Parliament, Forms, and Precedents relating to the Subject; being especially intended for Popular Use in Sea-port Towns. By W. T. Greenhow, of the Inner Temple, Esq., Barrister-at-Law. London: V. & R. Stevens, Sons, and Haynes. 1863.

Events of the Quarter.

THE following judgment was delivered by Chief-Justice Erle on the 16th of January, in the Court of Common Pleas, in the case *Kennedy v. Broun*:—

In this case the defendant obtained a rule to show cause why the verdict for the plaintiff should not be set aside, and either entered for the defendant if there was no evidence of a debt, or for a new trial if the verdict was against the evidence. The material facts upon the first question are, that in the course of the suit between Swinfen and Swinfen, the plaintiff, a barrister, became the advocate of the present defendant, and during the continuance of that litigation she made repeated requests to him for exertions as an advocate, and repeatedly promised to remunerate him for the same, and after the end of the litigation she spoke of the amount of this remuneration; and for the purposes of the present judgment, we assume that she admitted the amount of debt due for such remuneration to be 20,000*l.*, and promised to pay it. These facts are no evidence to support the verdict, if the promise of the defendant did not constitute any obligation, and we are of opinion that it did not. We consider that a promise by a client to pay money to a counsel for his advocacy, whether made before, or during, or after the litigation, has no binding effect; and, furthermore, that the relation of counsel and client renders the parties mutually incapable of making any legal contract of hiring and service concerning advocacy in litigation. For authority in support of these propositions we place reliance on the fact that in all the records of our law, from the earliest time till now, there is no trace whatever either that an advocate has ever maintained a suit against his client for his fees in litigation, or the client against an advocate for breach of a contract to advocate; and as the number of precedents has been immense, the force of this negative fact is proportionally great. To this we add the tradition and understanding of the profession, both as known to living memory, and as expressed in former times. Sir John Davies (*Davis's Rep. Pref.*, p. 23) declares that understanding at the beginning of the seventeenth century, when he says, "that the fees of professors of the law are not duties certain, growing due by contract for labour or service, but gifts; not *merces*, but *honorarium*." Sir John Davies would have ample experience of the rules of the profession from his eminence in the law, and his opinion is entitled to much weight. Lord Stowell, as appears in a work remarkable for learned research (*Wallace's Reporters*, p. 27), speaks of him as a "poet, a lawyer, and a statesman, and highly distinguished in each of these characters." Lord Hale declares the same understanding of the profession in the note to *Co. Lit.*, 295a, saying, "a counsellor

cannot bring any action (*id est* for his fees), for he is not compellable to be a counsellor. His fee is *honorarium*, and not a debt ;” and for this he cites Lord Nottingham’s MSS. The same note contains the opinion of Mr. Butler to the same effect, saying that in England the fees of counsel are honorary in the strict acceptation of the word. Blackstone also (vol. iii. p. 28), declares the same understanding :— “ A counsel can maintain no action for his fees, which are given not as *locatio* and *conductio*, but as *quiddam honorarium*, not as salary or hire, but as mere gratuity.” As we know of no authorities that conflict with these, we only add the names of the Judges who have had occasion to declare an opinion to the same effect, and they are Lord Hardwicke, Lord Kenyon, Kindersley, V.C., Pigot, C.B., and Bayley and Best, J.J. These are authorities for holding that the counsel cannot contract for his hire in litigation. The same authorities we rely on to show that the client cannot contract for the service of the counsel in litigation. There is the same absence of any precedent for such an action, and the reason for the one incapacity is good for both. We proceed to the authorities on which the plaintiff relied. Instead of examining each citation separately, we think it more convenient to take them in classes, and to give the reason why each class appears to us to have no weight. The proposition is confined to incapacity for contracts concerning advocacy in litigation. This class of contracts is distinguished from other classes on account of the privileges and responsibility attached to such advocacy, and on this ground we consider the cases unconnected with such advocacy to be irrelevant. Thus the barrister who contracted to serve as returning officer (“Egan v. Kensington Union,” 3 Q. B., 324), and the barristers who contracted to serve as arbitrators, and the barristers who contracted either for an annual sum by way of retainer or for an annuity *pro consilio impenso et impendendo*, made contracts not concerning litigation, and therefore not within the incapacity here in question. It may be that a contract for a general retaining fee for a counsel may not bind at the present day, because it relates in substance to litigation, and so may be distinguished from annuities to a standing counsel who was required to guide by his advice in the management of property and general affairs. The change in the habits of Courts and the practice of the Bar since the last mentioned cases were decided has probably made the position of an advocate now as different from that of standing counsel then as the position of the clergy now differs from that which they held when private chaplains were hired to serve as chaplains and perform other work, and were prosecuted for breach of their contracts to serve under the statute of 23 Edward III., relating to labourers, in one of which prosecutions, against a parochial chaplain for breach of his contract to serve as seneschal and be parochial chaplain, the Court of Common Pleas thought that, as far as related to his duty as chaplain, he might be considered to be in the service of God, and therefore not within a statute expressed to relate to mowers and reapers and the like, but hesitated so to decide till they had consulted their brethren of the other bench, and had their sanction. But, be

that as it may, fees unconnected with litigation are irrelevant to our present judgment, and this distinction seems to be taken in "*Mengay v. Hammond*" (Cro. Jac., 482), where the plaintiff sued for an annuity *pro consilio*. The defendant pleaded a refusal of the plaintiff to sign a bill in the Star Chamber, and the plea was held bad because a counsellor with such a fee is not bound to put his hand to every bill, but only to give counsel. With respect to the *dicta* cited by Mr. Kennedy relating to the liability of counsel for their conduct as advocates, they are all considered and overruled in the action of "*Swinfen v. Lord Chelmsford*" (5 Hurlst. and Nor., 518). Some relate to retainers relating to purchases of land, or similar services, and so are not within the incapacity here in question, and although the *dictum* of Paston (C. J. 14, H. 6, fo. 18, p. 58), "that action lies against a serjeant who fails to attend in court," and a *dictum* by Stokes, counsel, to the same effect, relate to litigation, yet they are mere remarks in the course of an argument and not adjudications, and they were expressly overruled as before mentioned. Mr. Kennedy cited *Rastel's Ent.*, p. 2, as containing precedents for actions against an attorney or counsel, for not appearing in court according to his retainer; but the book contains no entry against a counsel for that wrong. There are three entries in succession. The first is against an attorney, and is for that wrong. The second precedent is against a counsel who was retained to advise about the purchase of a manor, and betrayed his client's secrets and interest, and is not an entry which relates to litigation; and the third is against a counsel, but it is for a penalty under a statute, for taking retainers on both sides as an *ambidexter*. The citation from *Rastel*, therefore, does not support the plaintiff's argument. A considerable part of Mr. Kennedy's learned research consisted of anecdotes of various classes relating to barristers, irrelevant to the point for adjudication, because irrelevant to capacity or incapacity for contracting for advocacy. Such are the anecdotes relating to the habits of barristers when they held communication with their clients personally before the rights and duties of attorneys and solicitors were ascertained, and the advocate did the work of each branch of the profession — habits which continued in Jersey until lately. (See Jersey case, 13 Moore's P. C., 263.) Such also are those relating to alleged endeavours by barristers to obtain larger fees. Whether this has been done or not, and whether a communication in respect of the amount of the fees be made to the client by the clerk or the barrister, the nature of the fee is not altered, nor is the right to sue for it affected thereby. Such also are those relating to payment after instead of before the service is performed. In England the general usage is prepayment. On the continent, under the Roman law and the modern French law, and in some exceptional cases in England, the fee is paid after the service. But again, the nature of the fee is not altered by the time of payment. The anecdotes in each of these classes show that the payments are of gratuities and not of debts, and, so far as they are to be noticed for adjudication, tend to support the defendant's case. As to express contracts, certain *dicta* by Pigot, C.B., and by Pollock,

C.B., were cited for the purpose of proving that a barrister had capacity to make himself liable under a special contract with his client concerning advocacy, though not by an implied contract. We think that the effect of those *dicta* has been misunderstood. A special contract differs from an implied contract only in the mode of proof. If a brief marked with a fee for a given place of trial is left in silence, there would be some evidence of an implied contract to pay the fee were there no usage to the contrary, and no incapacity for such a contract. If the same brief is left with an express contract to pay the fee there would be an express contract if there were no incapacity. Where the service of the barrister according to usage is for a gratuity, that usage would be presumed to continue unless there was an express contract rebutting that presumption, and where there is no incapacity the presumption from usage is rebutted by an express contract. Pollock, C.B., does not refer to any authorities, but the cases referred to by Pigot, C.B., show that this was his meaning, for he refers to the cases above mentioned, where barristers, either as returning officers or as arbitrators, sustained actions for their fees. The incapacity depends on the subject matter of the contract, not on the mode of proof. When the contract is proved its incidents are the same whatever was the kind of evidence adduced for proof. If there is incapacity, words and implication are alike nullities, and no contract can result; but where there is no incapacity, and there are conflicting presumptions in respect of the *consensus* essential to create contract, there evidence of express words of clear meaning is decisive proof. In this sense the observation of Wood, V.C. (*Attorney-General v. College of Physicians*," 1 Johnson and H., 561) must be understood, saying, "That a physician might recover his fees if he makes a special contract." We know of no incapacity affecting a physician according to usage, the practice being for a fee, which is *honorarium*, not *merces*, and no action lies where the parties are presumed to have acted according to this usage; but if the presumption is rebutted by evidence of an express contract, such contract binds, and a physician may sue and be sued thereon, as was held in *Veitch v. Russell*," 6 Car. and M. 362. Mr. Kennedy argued that under the civil law an advocate could sue for his fees, and that Blackstone made a mistake in referring thereto to support a contrary opinion. In this it appears to us that the mistake is on the part of the plaintiff. Throughout the whole growth of the Civil Law, from the foundation of Rome to the *Digest of Justinian*, not only was the advocate always under incapacity to make any contract for his remuneration, but also throughout a part of that time he was under prohibition from receiving any gain for his services; whether the name be *donum*, or *merces*, or *honorarium*, is immaterial; the substance of the law was invariable, he never could contract for *merces*, though during part of the time he might lawfully accept a *donum*. In the beginning all agree that the patron received no money for advocacy; afterwards he took gifts to an excess, and was restrained in the year 550 A.U.C., by the "*Lex Cincia de*

donis et muneribus ne quis ea ob causam orandam caperet." If gifts were prohibited, *a fortiori* contracts for payments would not be allowed. This prohibition of all gifts for advocacy was further enforced by Augustus in the year 732 A.D.C., commanding advocates to plead gratuitously, and for breach they were ordered to refund fourfold. This prohibition against all gifts to advocates was relaxed in a time of great debasement, when, according to the passage in Tacitus referred to by Blackstone (*Anal.* lib. 11, c. 7), "*Non quicquam publicæ meritis tam venale fuit quam advocatorem perfidia.*" The Senate sought to enforce the Cincian law forbidding all gifts for protection against abuses on the part of advocates. Sicilius, an advocate of singular infamy, offered some of the arguments which have been urged in support of mercenary advocacy. The Emperor took an intermediate course, and by a decree fixed the *maximum* which an advocate might lawfully receive by way of gift at 80*l.*, and made him liable to refund if he took more. The words of Tacitus are—"Claudius capiendis pecuniis modum statuit ad dena sestertia quem egressi repetundarum tenerentur." The Senate made a further effort in the same direction, passing a law that every suitor before he took any step in the suit should swear that he had neither given nor contracted to give any money for advocacy. Pliny, in the passage referred to by Blackstone (*Epist.* lib. 5, 21), writing of a new edict by a prætor to enforce practically some recent laws, says:—"Sub edicto erat senatus consultum, hoc omnes qui quid negotii haberent, priusquam agerent, jurare jubebantur nihil se ob advocacionem cuiquam dedisse promissæ, cavisse. His enim verbis et mille præterea et venire advocaciones, et emi vetabantur. Peractis tamen negotiis mittebat pecuniam duntaxat decem millia dare." Although after this time gifts within the limited amount were lawful, still contracts with advocates during litigation are not shown to have been ever at any time sanctioned by the law of Rome. Mr. Kennedy referred to the *Digest*, lib. 50, tit. 13, art. 10 and 12, to prove that an advocate could sue for his fee under the extraordinary cognizance of the *preses*, but we do not find that these articles prove his contention. Art. 10 seems to relate to a suit by a client against an advocate to make him refund so much of a fee already paid as exceeded the legitimate amount, and gives the principle for estimating what that amount should be:—"In honorariis advocatorum ita versari debet iudex ut pro modo litis, pro advocati facundiâ, et fori consuetudine in quo acturus erat estimationem, adhibeat dummodo licitum honorarium non egrediatur." The article concludes with a rescript applicable only to refunding part of a fee:—"Eam duntaxat pecuniam quæ modum legitimum egressa est repetere debet." Art. 12 relates to securities and bargains for fees, and gives the rule when a suit can be maintained thereon. The effect seems to be that a promise while the litigation is pending does not bind, but that a security given after the cause is at an end may be enforced if the sum secured, together with the sums paid, does not exceed the legitimate amount. We have now considered as much of the authorities referred to as seems to us to be relevant, and in our judgment

they support the propositions on which the defendant relies—viz., that the relation of counsel and client in litigation creates an incapacity to contract for hiring and service as an advocate. If the authorities were doubtful, and it was necessary to resort to principle, this same proposition appears to us to be founded on good reasons. The facts of the present case forcibly show some of the evils which would attend both on the advocate and the client if the hiring of counsel was made binding. In this case the advocate by disclosing words of intimate confidence which passed in moments of helpless anxiety has raised the phantom of a contract for a sum of monstrous amount, and of this we hope we may say that there is no one in the profession of the plaintiff who would be willing to accept from him this verdict of 20,000*l.* as a gift. In the present case, too, if the client compares the competence and peace secured for her by her former advocate with the perils and the miseries of wearisome litigation derived from her later advocate, the contrast may suggest to her that gratuity is preferable to contract as a mode of remunerating advocates. But it is not merely on such considerations as these that this law is based. The incapacity of the advocate in litigation to make a contract of hiring affects the integrity and dignity of advocates, and so is in close relation with the highest of human interests—namely, the administration of justice. We are aware that in the class of advocates, as in every other numerous class, there will be bad men taking the wages of evil, and therewith also, for the most part, the early blight that awaits upon the servants of evil. We are aware, also, that there will be many men of ordinary powers performing ordinary duties without praise or blame; but the advocate entitled to permanent success must unite high powers of intellect with high principles of duty; his faculties and acquirements are tested by a ceaseless competition proportioned to the prizes to be gained—that is, wealth, and power, and honour without, and active exercise for the best gifts of mind within. He is trusted with interests, and privileges, and powers almost to an unlimited degree. His client must trust to him at times for fortune, and character, and life. The law trusts him with a privilege in respect of liberty of speech, which is in practice bounded only by his own sense of duty; and he may have to speak upon subjects concerning the deepest interests of social life, and the innermost feelings of the human soul. The law also trusts him with a power of insisting on answers to the most painful questioning; and this power, again, is in practice only controlled by his own view of the interests of truth. It is of the last importance that the sense of duty should be in active energy proportioned to the magnitude of these interests. If the law is that the advocate is incapable of contracting for hire to serve, when he has undertaken an advocacy, his words and acts ought to be guided by a sense of duty—that is to say, duty to his client, binding him to exert every faculty and privilege and power, in order that he may maintain that client's right, together with duty to the Court and himself, binding him to guard against abuse of the powers and privileges entrusted to him by a constant recourse to his own sense of

right. If an advocate with these qualities stands by the client in time of his utmost need, regardless alike of popular clamour and powerful interest, speaking with the boldness which a sense of duty can alone recommend, we say the service of such an advocate is beyond all price to the client, and such men are the guarantees to communities for the maintenance of their dearest rights, and the words of such men carry a wholesome spirit to all who are influenced by them. Such is the system of advocacy intended by the law, requiring the remuneration to be by gratuity; but if the law allowed the advocate to make a contract of hiring and service, it may be that his mind would be lowered, and that his performance would be guided by the words of his contract, rather than by principles of duty; that words sold and delivered according to contract, for the purpose of earning hire would fail of creating sympathy and persuasion in proportion as they were suggestive of effrontery and selfishness, and that the standard of duty throughout the whole class of advocates might be degraded. It may also well be that, if contracts for hire could be made by advocates, an interest in litigation might be created, contrary to the policy of the law against maintenance, and the rights of attorneys might be materially sacrificed, and their duties be imperfectly performed by unscrupulous advocates; and these evils, and others that may be suggested, would be unredeemed by a single benefit that we can perceive. The subject has been often and ably discussed, so that we have already said more than sufficient. We would only add that in the growth of the English law the advocates have been important agents in establishing liberty of thought and speech and action, which has resulted from the contests in Courts where such liberty has been contended for. The English advocates in our historical trials are entitled to be gratefully remembered, and it must not be forgotten that their minds were trained in the practice of advocacy without any contract. So also the Roman jurists are entitled to be gratefully remembered, because their intuitive sense of right showed to them where right was in the conflicts of interest perpetually arising, as the relations of man to man multiplied; and their words have helped to guide succeeding generations in their search for right, when similar conflicts arose. And it must not be forgotten that throughout the Roman system it was held that an advocate and a Professor of Law would be degraded by a contract of hiring, and that his reward was to be gratuitous. Mr. Kennedy has cited the *Digest*, lib. 50, tit. 13, arts. 10 and 12, on which we have remarked above. The title relates to the limits of the *extraordinaria cognitio* of the *preses*; and it may not be superfluous to add art. 5, expressly excluding therefrom suits by the class of Professors of Law, for a reason applicable to all advocates. On principle, then, as well as on authority, we think that there is good reason for holding that the relation of advocate and client in litigation creates the incapacity to make a contract of hiring as an advocate. It follows that the requests and promises of the defendant and the services of the plaintiff created neither an obligation nor an inception of obligation, nor any inchoate right whatever, capable of

being completed and made into a contract by any subsequent promise. By reason of that incapacity the present case is distinguished from "*Lampleigh v. Brathwaite*" and the cases following thereon. In all of them the defendant was assumed to have received from the plaintiff such a valuable consideration as would have made a valid contract, if a promise had been made before the consideration had passed. Here the defendant received nothing from the plaintiff which was capable of forming a consideration to support a promise, at whatever time such promise may have been made. In "*Lampleigh v. Brathwaite*" it was assumed that the journeys which the plaintiff performed at the request of the defendant, and the other services he rendered, would have been sufficient to make any promise binding if it had been connected therewith in one contract. The peculiarity of the decision lies in connecting a subsequent promise with a prior consideration after it had been executed. Probably, at the present day, such service on such request would have raised a promise by implication to pay what it was worth, and the subsequent promise of a sum certain would have been evidence for the jury to fix the amount. On the same principle, the cases cited in sequel to "*Lampleigh v. Brathwaite*" were also distinguished. In each of these cases the defendant had, by the permission of the plaintiff, received value belonging to the plaintiff which was sufficient to support any promise. As to one class, the original promise was excluded by the Statute of Frauds; but a subsequent promise was held to be evidence to support an action on an account stated ("*Pinchon v. Chilcot*," 3 Car. and P., "*Sego v. Dean*," 4 Bing. 459, "*Cocking v. Ward*," 1 C.B., 858). As to another class, a claim in equity to money was converted into a cause of action at law by an express promise to pay it to the plaintiff ("*Roper v. Holland*," 3 Ad. and E. 99, "*Topham v. Morecraft*," 8 Ad. and E. 972, "*More v. Hill*," 2 Peak, 10). For these reasons we think that the plaintiff's case is not within the principle of "*Lampleigh v. Brathwaite*," and we do not consider it to be our duty to extend the application of that principle. With respect to the claim for compensation for leaving Birmingham and coming to London, and for services in issuing publications for the purpose of creating a prepossession in favour of the defendant, there are several answers, of which two will suffice. The first is that these services were ancillary to the service as an advocate, and if the principal service could not be the subject of a contract, neither could any service which was merely accessory thereto and of no value without the principal. The second is, that the account is stated of the total of the claims, and if any one of the claims of undefined amount is to be omitted the statement of the account is disproved, and the action founded on such statement of account fails. We have now gone through the whole of the case, and we come to the conclusion that the plaintiff has not established a cause of action. It follows that the rule must be made absolute to enter the verdict for the defendant. If the judgment on this part of the rule should be reversed in a Court of Error, it will then be our duty to dispose of the remaining part relating to a new trial; and, following the

precedent in "*Betts v. Menzies*" (28 *L. J.*, Q. B., 370), we order the part of the rule relating thereto to be suspended until further order.

Mr. ex-Justice Crampton died, on the 29th December, of bronchitis, at his residence, near Enniskerry, in the 81st year of his age. He was called to the Irish bar in 1810, and was subsequently professor of law in Trinity College, Dublin. In 1830, Mr. Crampton was appointed Solicitor-General for Ireland; and in 1832 was appointed a judge in the Court of Queen's Bench, from which office he retired on a pension in 1858.

The Benchers of Gray's-inn have resolved that the arms of Mr. Napier, ex-Lord Chancellor of Ireland, shall be placed in a compartment of one of the windows of their hall. The right hon. gentleman has acknowledged the compliment in a letter to the treasurer, of which the following is a copy:—

"4, Merrion Square, S.

"Dear Mr. Treasurer,—I have to return my cordial thanks to the benchers of Gray's-inn for the honour which they have conferred upon me by the resolution, a copy of which you have now forwarded. My early connection with your ancient inn has been agreeably revived by the genuine hospitality with which, in common with the Attorney-General for Ireland (Mr. Whiteside), and other distinguished members of the Irish bar, who had been admitted to Gray's-inn, I have been greeted in the hall by the masters of the bench in recent years. To be had in memory within the venerable walls where the illustrious Bacon found an early home and a retirement at the last for his chastened spirit, where so many of the greatest lights and ornaments of our profession have been admitted and held in honour—statesmen, senators, and judges—men who have guided the councils, moulded the laws, and administered the justice of this free and happy realm, to be associated with such companions in arms, "the noble living and the noble dead," is a distinction of which any man might be justly proud. To me, as an Irishman, it is doubly gratifying. It assures me of a professional regard as mutual and as kindly as our private friendship, and it harmonizes with the desire now cherished by us all to assimilate the judicial systems of the two countries as the best security for the pure administration of justice in both. It may encourage the student as he treads the path which leads to preferment and honour, when he finds the way is open alike to Irish as to English competition. The Irish bar is honourably connected with Gray's-inn, which can boast of judges of the superior courts and law officers of the Crown in Ireland among its distinguished members. I trust that this happy and auspicious connection may not only be perpetuated, but extended. Among the benchers of Gray's-inn there are companions of my Parliamentary life, and friends whom I have long esteemed and valued; and I know not any honour which could be more grateful than this which they

have so generously conferred and you have so suitably communicated.—I have the honour to be, dear Mr. Treasurer,

“Your faithful and obliged,

“JOSEPH NAPIER.

“To A. J. Stephens, Esq., Q.C., LL.D.,

“Treasurer of Gray’s-inn.”

The Yelverton Marriage Case came to a conclusion on the 19th December, on which day judgment was given in the First Division of the Court of Session in favour of the pursuer, Mrs. Yelverton, reversing, by a majority of the judges, the decision given by Lord Ardmillan in July last. Lord Curriehill and Lord Deas were of opinion that the pursuer had proved a marriage, according to Scotch law, by interchange of consent, and by promise followed by intercourse. The Lord President differed, holding that the evidence adduced by the pursuer had not been sufficient to establish either point.

APPOINTMENTS.

THE Queen has been pleased to appoint the Right Hon. Earl Grey; the Right Hon. Lord Naas; the Right Hon. Lord Cranworth; the Right Hon. Lord Chelmsford; the Right Hon. Sir John Somerset Pakington, Bart., G.C.B.; the Right Hon. Spencer Horatio Walpole; the Right Hon. Joseph Warner Henley; the Right Hon. Edward Pleydell Bouverie; the Right Hon. Sir Alexander James Edmund Cockburn, Bart., Chief Justice of the Court of Queen’s Bench; Horatio Waddington, Esq.; Russell Gurney, Esq., Recorder of the City of London; Charles Owen O’Conor, Esq. (commonly called the O’Conor Don); and Hugh Culling Eardley Childers, Esq.; to be her Majesty’s Commissioners to inquire into the operation of the Acts relating to transportation and penal servitude, and into the manner in which sentences of transportation and of penal servitude have been and are carried into effect, under the provisions of the said Acts, or any of them.

Mr. J. G. Teed, Q.C., has been appointed Judge of the Lincolnshire County Courts (circuit 17), in the room of the late Mr. J. G. Stapylton Smith, deceased.

Sir J. E. Eardley Wilmot, Judge of the Bristol County Court, has been appointed Judge of the Marylebone Court, vacant by the death of Mr. J. C. Adolphus. Mr. Willis, Judge of the Northumberland County Courts, has succeeded Sir J. Eardley Wilmot; and Mr. W. Blanchard, of the Northern Circuit, has been appointed Judge of the County Court of Northumberland.

Mr. Francis Edward Guise, of the Oxford Circuit, has been appointed Recorder of Hereford, in the room of Mr. Serjeant Pigott, resigned.

The Right Hon. Spencer Walpole, M.P., has been appointed an Ecclesiastical Commissioner, in the room of Mr. Deedes, deceased.

Mr. G. Wingrove Cooke has been appointed to the Copyhold and Enclosure Commission Board, in the room of the late Mr. Mules.

Mr. J. Osbourne, Mr. J. R. Kenyon, Mr. T. Southgate, and Mr. A. Hobhouse, Members of the Equity Bar, and Mr. J. St. George Burke, of the Parliamentary Bar, have been appointed Queen's Counsel.

At a Pension of the Hon. Society of Gray's Inn, Mr. Thomas Southgate, Q.C., took his seat as a Benchler of the Society.

Mr. Edward Lloyd, Barrister-at-Law, has been appointed Secretary to the Royal Commission for Inquiry into the Patent Laws; and Mr. T. F. Kent, of the Equity Bar, Secretary to the Commission of Inquiry into Convict Discipline.

Mr. C. F. Trower, gentleman of the Chamber to the Lord Chancellor, has been appointed Secretary of Presentations, in the place of Mr. P. H. Pepys, appointed principal Secretary to the Lord Chancellor.

Mr. Holdship has been appointed Registrar to the Court of Chancery, in the place of Mr. F. Metcalfe, deceased; and Mr. W. Pugh has been appointed Clerk in the Registrar's Office, in the room of Mr. Holdship.

Mr. W. R. Drake, of the firm of Bircham, Dalrymple, and Drake, has been appointed Treasurer of the Lancashire County Courts, vacant by the death of Mr. Hugh Hulton.

Mr. Robert Holsby, of York, Solicitor, has been appointed Clerk of Arraignment of the Northern Circuit, vacant by the death of Mr. W. T. Pritchard.

The Master of the Rolls has appointed E. S. Bailey, J. H. Bolton, W. S. Cookson, C. K. Freshfield, F. H. Janson, Henry Lake, Edward Lawrence, Joseph Maynard, Parke Nelson, F. J. Nicholl, William Stephens, and William Williams, Esquires, Solicitors, to be Examiners for the current year, to examine candidates for admission to practice as Solicitors of the Court of Chancery. And the same gentlemen, with the addition of Ralph Barnes, John Clayton, William Murray, and Edward Leigh Pemberton, Esquires, Attorneys, have been by the Common Law rule appointed to examine all candidates for admission as Attorneys for the same period.

Mr. Johann Fried Christop Muncke, Ph. D., and Mr. Christopher Knight Watson, M.A., have been appointed special examiners for the intermediate examinations of Articled Clerks in the present year.

Mr. W. H. Ashurst has been appointed Solicitor to the Post-Office, in the room of the late Mr. Peacock, deceased.

Mr. Thomas James Nelson has been elected City Solicitor. Mr. Mackrell, the senior Under-Sheriff for London and Middlesex, appointed Solicitor to the Irish Society; and Mr. A. J. Baylis, Solicitor to the City Commissioners of Sewers, each in the room of the late Mr. Charles Pearson.

SCOTLAND.—The Solicitor-General, Mr. Edward Francis Maitland,

has been appointed to the vacant seat on the Bench, in succession to Lord Ivory, and Mr. George Young has been appointed Solicitor-General. Mr. A. R. Clark, Sheriff of Inverness-shire, has succeeded Mr. Young as Sheriff of Haddington and Berwick. Mr. W. Ivory has been appointed Sheriff of Inverness-shire, and Mr. A. B. Shand Sheriff of Kincardineshire, vacant by the death of Mr. Montgomerie Bell.

IRELAND.—Mr. Edward Parkyns Levinge, of the Home Circuit, has been appointed a Judge in the High Court of Fort William, Bengal, and Mr. Richard O'Reilly has been appointed Assistant Crown Counsel for the County of Meath, vacant by the promotion of Mr. Levinge.

Mr. Joshua Clarke, Q.C., has been appointed Chairman of the Quarter Sessions of Cowan, vacant by the death of Mr. P. M. Murphy, Q.C.

Mr. Lionel E. Fleming has been appointed Crown Solicitor for the County of Longford. Mr. John Francis Teeling, Solicitor, has been appointed Assistant-Registrar to the Court of Bankruptcy, vacant by the death of Mr. Thomas Battley.

Mr. Robert F. Franks has been appointed Secretary to the Ecclesiastical Commissioners, in the room of the late Mr. Thomas Burke.

The Benchers of King's Inn have elected Mr. Joseph M. Lambarte, Barrister-at-Law, to the office of Librarian. Mr. James Henry Monahan, Barrister-at-Law, has been appointed Purse-bearer to the Lord Chancellor, in the room of Mr. David Pigott, lately appointed Assistant Barrister for the County of Louth.

AFRICA.—Mr. George Frere has been appointed Judge, Mr. E. L. Layard, Arbitrator, and Mr. W. T. Smith, Secretary or Registrar of the mixed Court, established at the Cape of Good Hope for the suppression of the Slave Trade; and Mr. George Skelton, Judge, and Mr. W. Smith, Secretary or Registrar of a similar Court at Sierra Leone, under the Treaty of April last, between Great Britain and the United States.

Mr. Charles Mills has been appointed Sheriff of the Territories of British Kaffraria.

CEYLON.—Mr. Henry Byerley Thomson has been appointed Puisne Judge of the Supreme Court; and Mr. R. F. Morgan has been appointed Her Majesty's Advocate.

INDIA.—Baboo Sumbhoo Nath Pundit, of the Calcutta Bar, has been appointed Judge of the High Court of Calcutta.

Mr. Henry Newton, of the Bombay Civil Service, has been appointed Judge of the High Court of Bombay.

LAGOS.—Mr. R. W. Gifford Watson has been appointed Chief Magistrate of the Settlement.

MAURITIUS.—Mr. Robert Temple has been appointed Master of the Supreme Court of the Island; and Mr. G. Barthelémy Colin has been appointed Puisne Judge.

QUEENSLAND.—Mr. James Cockle, of the Midland Circuit, has been appointed Chief Justice of the Colony.

CALLS TO THE BAR.

Michaelmas Term, 1862.

INNER TEMPLE.—David Knox Mair, Esq., M.A.; Thomas James Richard Hilton, Esq., B.A.; Alexander Oliver, Esq., B.A.; Jean Pierre Georges Aubin, Esq.; Robert Watson, Esq.; Robert William Cary Reeves, Esq., LL.B.; Philip Albert Myburgh, Esq., B.A.; Hubert Seymour Leeson, Esq.; the Honourable Edward Nugent Leeson, B.A.; Henry Davidson, Esq., M.A.; John Edward Meek, Esq., B.A.; Charles Edward Fox, Esq., B.A.; John Edward Barker, Esq., M.A.; Alfred Jobling, Esq.; Robert French Sheriff, Esq.; Richard Lambert, Esq.; Brian Wilkes Wand, Esq., B.A.; and Florence Crauford Grove, Esq.

GRAY'S INN, — Berkeley William King, Esq.; Henry Danby Seymour, Esq., B.A., M.P.

LINCOLN'S INN.—Edward Gilbert Herbert, Esq., LL.B. (holder of the Studentship); Thomas George Fardell, Esq., B.A.; George Moody, Esq., M.A.; John Ross Coulthart, Esq.; John Booth, Esq., M.A.; Edward Howorth Allen, Esq., B.A.; John Knill Jope Hichens, Esq., M.A.; Thomas Tindal Methold, Esq., B.A.; Edward John Foster, Esq., B.A.; Marshall Hall, Esq.; Horace Waddington, Esq., M.A.; George Isaac Foster Cooke, Esq., B.A.; Clifford Evans Fowler Nash, Esq., B.A.; Walter Morshead, Esq., B.C.L. and M.A.; Kenyon Charles Shirecliffe Parker, Esq.; Henry Burrell, Esq., B.A.; Woodyer Merricks Buckton, Esq.; Lewis Pugh Evans, Esq., M.A.; James Stirling, Esq., B.A.; and Thomas Lloyd Murray Browne, Esq., B.A.

MIDDLE TEMPLE.—R. Tarrant Harrison, Esq.; Charles Philip Cooper, Esq.; Edmund Russell Roberts, Esq.; Daniel Logan, Esq.; and Charles Lightfoot, Esq.

Hilary Term, 1863.

LINCOLN'S INN.—Isambard Brunel, Esq., M.A.; Reginald Cardwell, Esq., M.A.; James Henry Ramsay, Esq., M.A.; Thomas Godfrey Faussett, Esq., M.A.; Frederick Whitting, Esq., M.A.; Thomas Erskine Holland, Esq., M.A.; Joseph Henry Warner, Esq., B.A.; James Weston, Esq.; Edward Montague Earle Welby, Esq., B.A.; Marwood Tucker, Esq., M.A.; John Cutler, Esq., B.A.; Edmund Henry Wodehouse, Esq., M.A.; Henry Montagu Doughty, Esq.; Charles Perring, Esq., B.A.; Frederick Augustus Burgett, Esq., B.A.; John Henry Brougham Vivian, Esq.; Francis Nethersole Cates, Esq.; Decimus Sturges, Esq., B.A., LL.B.; Charles Henry Stewart, Esq.; and Muter Coomarasamy, Esq.

MIDDLE TEMPLE.—William Tayler, Esq.; John Hill Gough, Esq. (holder of Certificate of Honour, first class); William Robertson, Esq.; William Thomas Makins, Esq., B.A.; Henry Graham Lawson,

M.A., Esq.; Fleming Smythe, Esq.; and John Leybourne Goddard, B.A., LL.B., Esq.

INNER TEMPLE.—William Grantham, Esq. (holder of the Studentship awarded this present Hilary Term); William Arundell Yeo, Esq., B.A.; James Marsham Moorsom, Esq., B.A.; Albert Venn Dicey, Esq., M.A.; Bruce Campbell, Esq.; Alexander Mortimer, Esq., B.A.; Erlysman Pinckney, Esq., B.A.; James Thomas Foard, Esq.; Henry Mason Bompas, Esq., M.A., LL.B.; Frederic Thomas Durell Ledgard, Esq., B.A.; Ralph Forster, Esq., M.A.; and Robert Barclay Chapman, Esq.

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

Michaelmas Term, 1862.

At the examination of candidates for admission on the roll of attorneys and solicitors of the superior courts, the examiners recommended the following gentlemen, under the age of twenty-six, as being entitled to honorary distinction:—

Frank William Stone, aged 21; Samuel Stephenson Booth, aged 22; Stephen Brown Dixon, jun., aged 23; Daniel Birt, aged 24.

The Council of the Society have accordingly awarded the following prizes of books:—

To Mr. Stone, the prize of the Honourable Society of Clifford's-inn; to Mr. Booth, the prize of the Honourable Society of Clement's-inn; to Mr. Dixon and Mr. Bird, each one of the prizes of the Incorporated Law Society.

The examiners also certified that the following candidates passed examinations which entitle them to commendation:—

Francis George Gorton, aged 21; Mr. Tuffnell Samuel Cedric Houghton, aged 21; Owen Low, aged 24; Thomas Porter Lyon, aged 21; Henry Thomas, aged 23.

The Council accordingly awarded the certificates of merit.

The examiners have further announced to the following candidates that their answers to the questions at the examination were highly satisfactory, and would have entitled them to prizes or certificates of merit if they had been under the age of 26:—

Alfred Curtis, aged 33; Joseph Gratian Jackson, aged 35.

The number of candidates examined in this Term was 98; of these 74 were passed, and 24 postponed.

At the public examination of the students of the Inns of Court, held at Lincoln's Inn Hall, on the 30th and 31st of October, and the 1st of November, 1862, the Council of Legal Education awarded to Edward Gilbert Herbert, Esq., a studentship of fifty guineas per

annum, to continue for a period of three years; and to John H. Gough, Esq., a certificate of honour of the first class; and to, Mordaunt Pemberton, Esq., Alexander J. Robertson, Esq., George Miller, Esq., Robert French Sheriff, Esq., James Mew, Esq., Edmund Turnoe, Esq., James P. Wyatt, Esq., Robert William Cary Reeves, Esq., Robert Watson, Esq., and William Henry Alexander, Esq., certificates that they have satisfactorily passed a public examination.

And at the examination held on the 8th, 9th, and 10th November, the Council awarded to Mr. William Grantham, student of the Inner Temple, a studentship of fifty guineas per annum, to continue for a period of three years; and to Mr. Arthur M. Channell, student of the Inner Temple, Mr. James Marshall Moorsom, student of the Inner Temple, Mr. Bruce Campbell, student of the Inner Temple, and Mr. Frederick Whitting, student of Lincoln's Inn, certificates that they have satisfactorily passed a public examination.

Necrology.

September.

- 4th. HENRY GILBERT, Esq., Solicitor, aged 56.
 21st. HUME, JAMES, Esq., Senior Magistrate of Calcutta.
 30th. MASFEN, HORACE, Esq., Barrister, aged 36.

October.

- 29th. GREEN, THOMAS, Esq., Barrister, aged 26.
 31st. FIELD, G. Y., Esq., Solicitor.

November.

- 2nd. BROWN, CHARLES W., Esq., Solicitor, aged 31.
 7th. MURPHY, R. M., Esq., Q.C.
 7th. LEDIARD, THOMAS, Esq., Solicitor.
 12th. FALKNER, FRANCIS, Esq., Solicitor.
 15th. WHATELEY, WILLIAM, Esq., Q.C., aged 68.
 17th. KENDALL, JOHN, Esq., Solicitor, aged 55.
 19th. MANSON, W. PITT, Esq., Barrister, aged 34.
 20th. BELL, W. ANTHONY, Esq., Stipendiary Magistrate of Jamaica.
 22nd. BUCKTON, JAMES, Esq., Solicitor, aged 69.
 23rd. COLES, H. BEAUMONT, Esq., M.P., Barrister.
 23rd. LLOYD, F. W., Esq., Barrister.
 25th. LATOUR, EDWARD DE, Esq., late Officiating Judge in the High Court of Calcutta.
 27th. WITHERS, F. R., Esq., Solicitor.
 27th. VIZER, WILLIAM, Esq., Solicitor, aged 56.
 27th. GRAY, WILLIAM, Esq., Solicitor, aged 60.
 28th. BUCK, ANTHONY, Esq., Solicitor, aged 65.
 30th. BUCKING, ALFRED, Esq., Solicitor.

December.

- 4th. BASHAM, GEORGE, Esq., Solicitor.
 4th. MULES, HENRY C., Esq., Copyhold, Enclosure, and Tithe Commissioner, aged 46.

- 6th. WATERWORTH, T. W., Esq., Solicitor, aged 24.
- 9th. PIERCE, F. R., Esq., Barrister, aged 34.
- 9th. THOMPSON, FREDERICK, Esq., Barrister.
- 16th. BRAY, JOSEPH, Esq., Solicitor, aged 64.
- 19th. NICHOLSON, STEWART F., Esq., Solicitor.
- 21st. FOX, CHARLES J., Esq., Solicitor, aged 38.
- 21st. KEKEWICH, GEORGE, Esq., late Judge at the Cape of Good Hope, aged 84.
- 24th. ADOLPHUS, J. LEYCESTER, Esq., County Court Judge.
- 29th. ALLNUTT, E. G. STEVENS, Esq., Barrister, aged 47.

January.

- 2nd. SIMMS, JAMES, Esq., late Puisne Judge of Newfoundland, aged 83.
- 5th. DANCE, CHARLES, Esq., Registrar of the late Insolvent Debtors' Court, aged 69.
- 8th. HUNTLEY, R. F., Esq., Barrister.
- 12th. RYMER, W. H., Esq., Solicitor, aged 54.
- 13th. TAYLOR, HENRY, Esq., Barrister, aged 43.
- 14th. ST. GEORGE, T. B., Esq., Barrister, aged 81.
- 15th. BABINGTON, W. ST. LEGER, Esq., LL.D., Barrister.
- 16th. ROGERS, G. J., Esq., Solicitor.

List of New Publications.

Acts—Public General Acts 25th & 26th Vict., 1862; intended as a Supplement to the Commercial and General Lawyer. 8vo., 4s. 6d. sewed.

Archbold—New Law of Bankruptcy, with the General Orders of the Bankruptcy Court and County Courts; and a Supplement, comprising the Decided Cases on the Subject, to September, 1862. By J. F. Archbold, Esq., Barrister. Second Edition, 12mo., 18s. cloth.

Arundell—A Practical Treatise on the Law relating to Mines and Mining Companies. By J. W. Arundell, Solicitor. Post 8vo., 4s. cloth.

Bullen and Leake—Precedents of Pleading in Personal Actions in the Superior Courts of Common Law; with Notes and Appendix. By E. Bullen and S. M. Leake, Esqrs., Barristers. Second Edition. Post 8vo., 26s. cloth.

Cox—Law and Practice of Joint Stock Companies and other Associations, as regulated by the Companies' Act, 1862. By E. W. Cox, Esq., Barrister. Fifth Edition. 12mo., 12s. 6d. cloth.

Greenhow—The Shipping Law Manual; a concise Treatise on the Law governing the Interests of Shipowners, Merchants, &c., with Forms and Precedents, By W. T. Greenhow, Esq., Barrister. 8vo., 20s. cloth.

Halliday—A Digest of the Examination Questions in Common Law, Conveyancing, and Equity. By R. Halliday, Solicitor. Third Edition. 8vo., 15s. cloth.

Lindley—A Treatise on the Law of Partnership, including its application to Joint Stock and other Companies; with a Supplement. By N. Lindley, Esq., Barrister. 2 vols. royal 8vo., £3 3s. cloth.

Lindley—Supplement to the above, separately. Royal 8vo., 16s. cloth.

Lumley—The Union Assessment Committee Act, 1862, with Introduction, Notes, and an Appendix, containing the Circular Letter of the Poor Law Board upon the Act. By W. G. Lumley, Esq., Barrister. Fourth Edition. 12mo., 3s. 6d. cloth.

Mackenzie—Studies in Roman Law, with comparative Views of the Laws of France, England, and Scotland. By Lord Mackenzie. 8vo., 12s. cloth.

Maclachlan—A Treatise on the Law of Merchant Shipping, with a Supplement, containing the Merchant Shipping Act Amendment Act, 1862. By D. Maclachlan, Esq., Barrister. Royal 8vo., 36s. cloth.

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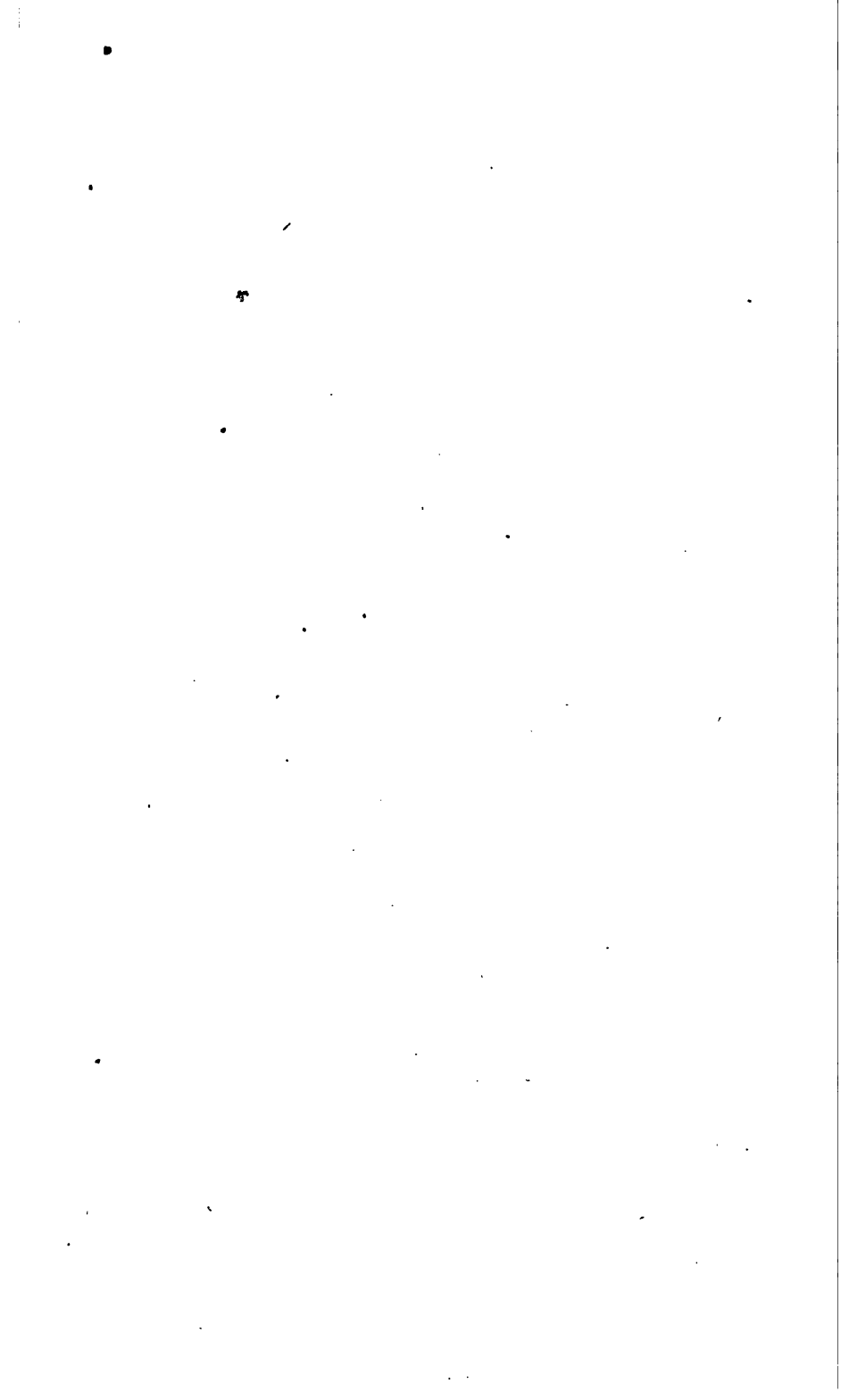
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